

"UNTIL WE FALL TO THE GROUND  
UNITED": CHEROKEE RESILIENCE AND  
INTERFACTIONAL COOPERATION IN THE  
EARLY TWENTIETH CENTURY

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Submitted to the Faculty of the  
Graduate College of the  
Oklahoma State University  
in partial fulfillment of  
the requirements for  
the Degree of  
DOCTOR OF PHILOSOPHY  
May 2018

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## ACKNOWLEDGEMENTS

A common expression is that it takes a village to raise a child. It also takes a village to raise a graduate student. There are many whom I need to express my utmost gratitude for fostering my success in the last decade.

I first want to thank the Scholarship Committee in the OSU Department of History for their continued support that enabled me to continue my education despite financial difficulties. Throughout my time at Oklahoma State University, I have been lucky to have worked with several professors. Drs. Moses, McCoy, Cooper, and Huston provided wonderful encouragement when I was a new student. I am thankful for the time Dr. Brian Frehner served as my advisor. A special thank you to Dr. Bryans for serving as my last advisor and staying with me through the entire process. I have greatly appreciated the perspective and encouragement from Dr. Miller in the later part of the dissertation process. Also, a thank you to the rest of my committee: Drs. Arata, Miller, and Smith.

In a personal sense, I have had the support of so many. I appreciate my colleagues, Dr. Mary Sanders Bracy, as well as Elizabeth Bass and Jason Harris. In addition, I cannot stress the ongoing support and aid I received from Dr. Justin Prince and his wife, Carla.

Archivists serve an important role to researchers as well. A thank you to Bill Welge, formerly the head of the Archives and Research Division of the Oklahoma Historical Society for first putting me on the path of the topic that would become my dissertation. Also, I greatly appreciate those at the Western History Collections, the James Vaughan Library in Tahlequah, and the Carl Albert Research Center in Norman.

I appreciate Sarah Dumas for supporting me the entire time. I received an immense amount of encouragement and support from my previous professors, including Dr. Tim H. Baughman, Dr. Loughlin, and Heidi Vaughn at the University of Central Oklahoma and Michelle Brockmeier from Rose State College.

As always, I appreciate my grandparents and parents for their unwavering encouragement. I commend Kelly Douglass, who met me the week before comprehensive exams, and stayed the entire time during the rest of my journey.

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Date of Degree: May 2018

Title of Study: "'UNTIL WE FALL TO THE GROUND UNITED': CHEROKEE  
RESILIENCE AND INTERFACTIONAL COOPERATION IN THE  
EARLY TWENTIETH CENTURY"

Major Field: HISTORY

Abstract:

"'Until We Fall to the Ground United': Cherokee Resilience and Interfactional Cooperation in the Early Twentieth Century," chronicles the political history of the Cherokee tribal government from 1906 to 1950. After the 1898 Curtis Act eventually abolished the recognition of the Cherokee and other tribal governments in 1906, the Cherokees put aside the nearly one hundred years of sometimes violent factionalism to retain their autonomy. Coming together under the Keetoowah, the tribe reorganized under a new constitution and charter according to the Oklahoma Indian Welfare Act passed in June 1936.

Before the twentieth century, tribal factionalism enabled the US to interfere in tribal affairs beyond enforcing its Indian polices. Beginning with removal to the West, the US signed the Treaty of New Echota with the party most favorable to the officials' goals. After the Trail of Tears in the 1830s, violent retribution for removal and a dispute on the official government of the tribe led to the US intervention and Treaty of 1846. Opposing sides were chosen again in the American Civil War, causing a harsh Treaty of 1866 that damped self-determination even further. Disagreement occurred after the Dawes Act and allotment was forced on all in the tribe.

However, with the Curtis Act and dissolution of tribal government in 1906, those divided were able to work together peacefully because they had few other options. The tribe found itself without a way to govern themselves and submit claims and complaints to the US. The splintered factions united in the 1920s and along with the terms of the Oklahoma Indian Welfare Act served as a successful, single, federally-recognized, authoritative tribal body: Keetoowah Incorporated, followed by the United Keetoowah Band. This coalition continued, albeit with some conflict, until the 1970s and the rewriting of the Cherokee constitution that divided the Cherokees into two governments that exist today.

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## CHAPTER I

### INTRODUCTION

In 1898, the United States government passed the Curtis Act, declaring that it would no longer recognize tribal governments in Indian Territory after the completion of land allotment in March 1906. As a result, in the early twentieth century, the Cherokees and other tribes lost their right to self govern. However, despite the sometimes violent intratribal factionalism that ran rampant for nearly one hundred years, the fractionated tribe eventually worked together to reorganize and retain their sovereignty through a charter under the Oklahoma Indian Welfare Act of 1936.<sup>1</sup> Without this intratribal cooperation, the Cherokee would not have regained US recognition and their sovereignty to provide for their citizens until the tribal revitalization in 1970.

This work contributes to native political history, as well as general US history, by chronicling not only the outside US American Indian policies and what they meant for the Cherokee but also how the people reacted among themselves to this external pressure. "Until We Fall to the Ground United" provides the other side of the story and is similar to the works of William G. McLoughlin and Andrew Denison; American Indians, and specifically the Cherokee as this work's focus, opposed the federal government, organized, and fought amongst themselves regarding the best actions for the survival and happiness of their people. Some believed this would be achieved through assimilation into white mainstream society while others believed a return to traditional tribal ways proved a better

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<sup>1</sup> A constitution and corporate charter of the Cherokees was approved and ratified on October 3, 1950. The Congressional act that approved the Cherokees organizing under a charter occurred in 1942 and US federal recognition was extended to the United Keetoowah Band of Cherokee Indians of Oklahoma in 1949.

option. Regardless of these ideological differences, Cherokee leadership in the early twentieth century proved resilient and put aside those arguments to work together for the future of their people.

Chapter Two provides a historiography including the shift of depicting American Indians as passive observers to active participants, as well as the vast amount of monographs that depict US Indian policies concurrent to the relevant era of this work. These remain vital to understanding the outside pressures the tribes encountered. Works by historians such as Angie Debo, William McLoughlin, and Andrew Denson chronicle the negative effects of US Indian policies while authors like Francis Paul Prucha and Frederick Hoxie study the policies themselves, as well as the negative effects of such policies on Native Americans.

However, scant historiography exists for the Cherokees specifically in the time period from 1906 to the 1930s, even from the tribe itself. When the federal government no longer officially recognized the tribal government, official records of the National Council and chiefs were no longer kept. Therefore, reliable sources are extremely difficult to find for the era in comparison to earlier times. This work relies heavily on local newspapers, as the official paper of the Cherokees also disbanded. When a person wanted to distribute news to the rest of the tribe, they would submit a letter or announcement to a local paper for publishing. A few letters exist from the Keetoowah faction but otherwise, newspapers remain the only voice of the natives. Today, oral histories and tribal accounts of that era have been digitized and published on tribal websites and blogs. However, a historian must remain objective and scrutinize these stories heavily as the same factionalism erupted in the 1970s and continues today, with each side weighing the scales in their favor. For example, the website of the United Keetoowah Band provides a detailed history of its origins as a religious society and its rise as a political entity, along with the concurrent Cherokee Nation government. On the other hand, the Cherokee Nation's account of its history does not include the Keetoowahs even once, skipping the years 1906-70 when the rival faction served as the only existing Cherokee government.

Another tempestuous aspect of American Indian history is the discussion of race, ethnicity, and blood quantum. An analysis of intratribal relations and politics and their effect on sovereignty within the United States cannot be separated from a discussion of race and ethnic identity, especially within the Cherokee who took pride in their heritage and defined their ideological factions by it. This study includes these aspects of race, ethnicity, and blood quantum as needed but not as extensively as other historians such as Circe Sturm and Erik Zissu. Sturm and Zissu have already written extensively on the topic, as is outlined in the second chapter.<sup>2</sup> Race is mentioned by tribal members when discussing factions, such as "full blood" to mean Traditionals and "mixed blood" as Progressives. These are generalizations and not completely accurate. Traditional leader John Ross, for example, was only one-eighth Cherokee. Both factions used ancestry as a form of insult, the "mixed bloods" often referred to as "blood traitors" and corrupt while the "full bloods" were seen as child-like and backwards. Progressives, even though they tended to live within white society, often still practiced their native religion. David Rich Lewis and William Wash in "Reservation Leadership and the Progressive-Traditional Dichotomy" also point out the contradictions and simplification that result from utilizing Progressive versus Traditional language. Lewis and Wash do not provide an alternative to these terms and neither does this work. Research from within the tribe solely relies on these terms to define their factions and this work adheres to how the tribes define themselves.<sup>3</sup>

In addition to the tribe's own definitions of identity, the US government utilized the degree of blood quantum to measure restrictions and rights they granted indigenous people as they saw those without white ancestry as less "civilized." When the factions united in the 1910s, Redbird Smith sought to bring together all Cherokee, regardless of blood quantum, as everyone was "Indian." Since

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<sup>2</sup> Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma* (Los Angeles, CA: University of California Press, 2002); Erik Zissu, *Blood Matters: Five Civilized Tribes and the Search of Unity in the Twentieth Century* (London: Routledge Publishing Company, 2016).

<sup>3</sup> David Rich Lewis and William Wash, "Reservation Leadership and the Progressive-Traditional Dichotomy: William Wash and the Northern Utes, 1865-1928," *Ethnohistory* 38 (Spring 1991): 124-48.



the focus of this dissertation is solely political and legal in nature, discussion of blood quantum and racial identity is limited only to when it is mentioned within legislation or treaties.

Similarly, several versions of "American Indian" are utilized. In this dissertation, to avoid close word repetition, I utilize native, American Indian, Native American, Indian, and indigenous. The term "Indian" remains very offensive to First Nations peoples of Canada. However, in this work, the these terms refers to the peoples indigenous to the current political borders of the United States, who are referred to as each of these terms within legal and personal documents, as well as in relation to one another. No offense is meant through the use of these terms.

"Until We Fall to the Ground United" chronicles the history of the Cherokee Nation and its politics during this tumultuous era in its history with the end of federal recognition of tribal sovereignty.<sup>4</sup> In the early twentieth century, the tribe struggled to continue self governance after the Curtis Act ended federal recognition. The Keetoowah organized under a corporate charter in 1905 to continue in a limited, more business oriented capacity. Realizing the need for cohesiveness to achieve any positive results for their people, the factions came together to organize under the Oklahoma Indian Welfare Act (OIWA), passed in June 1936. After years of a complicated application process involving working with less than knowledgeable US officials, the Keetoowah gained a charter under the OIWA to function as the recognized Cherokee tribal government, and the US approved their new charter and new constitution in 1950.

To better understand the importance and difficulty of such an alliance of factions, one must know the long history of factionalism and its consequences as well as concurrent US Indian policies. This work continues with chapter three providing the historical context of US Indian policy and the Cherokee's tribal government, beginning in 1828 with the creation of a centralized republican tribal government. At the time, the US believed the best way to handle "the Indian problem" would be to

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<sup>4</sup> Keetoowah Society Laws, April 29, 1859, The Original Keetoowah Society, <http://keetoowahsociety.org/laws.htm> (accessed December 1, 2017).

move them all west, away from Anglo American society. However, the Cherokees and others did not wish to leave their ancestral homelands. As a result of these pressures, the clearly delineated factions that can be traced to today. After the passage of the Indian Removal Act of 1830, Cherokee Chief John Ross and a delegation of elected officials traveled to Washington DC attempting to prevent the loss of their homelands. An opposing faction of assimilationists, without any authority from the Cherokee people and known as the Treaty Party, signed an agreement with the US that resulted in the Trail of Tears.

After removal, conflict erupted over which faction would serve as the government of the tribe as well as revenge against those who signed the removal treaty. After arriving in Indian Territory, some of those who followed Ross asserted a traditional tribal law and assassinated the leaders of the Treaty Party for giving up their land without authorization from the people. This began violent guerilla fighting between both groups throughout the 1840s until the intervention of the US government led to a peace agreement between Ross and Treaty Party leader Stand Watie. This incited a cycle of factionalism over the best choices for the tribe resulting in the intervention of the US, which caused a further erosion of self-determination through another treaty.

After an era called the golden age of the Cherokee Republic, the nation once again suffered from violent factionalism, as the US did, during the American Civil War. Ross wished to remain neutral while Watie allied himself with the Confederates. To keep the nation together, Ross eventually allied with the Confederacy, but most of his followers joined the Union cause. Once again the Cherokees fought each other until the peace treaty forced upon them by the US government in 1866. The harsh Treaty of 1866 and the end of legal jurisdiction marked a lessening of Cherokee sovereignty.

After the American Civil War and during Reconstruction, the Cherokee Nation pulled itself back together to rebuild, a difficult feat since much of the nation had been burned. In the late

nineteenth century, the United States sought to assimilate American Indians into Anglo-American society. The federal government placed native children in boarding schools to teach them English and white culture while also attempting to eradicate their languages. Concurrently, the US also sought to turn formerly nomadic people into sedentary, individual, agricultural farmers. To do so, the US ended native traditional communal ownership with the General Allotment Act in 1887, which applied to all tribes except the Five Tribes. In 1893, the federal government created the Dawes Commission to apply the policy to those exempt, including the Cherokee.

However, with the creation of the Dawes Commission and allotment, many of the same fissures dating back to the 1830s reemerged. While factionalism did not always follow blood quantum, most of the time "full bloods,"<sup>5</sup> or Traditionals, opposed the ending of communal land holding while "mixed bloods," or Progressives, favored assimilation. Despite different political maneuvering, in the beginning the Cherokee government maintained a stance against negotiating, with one official stating that if allotment occurred, the people would become like the Anglo American poor who did "not own a foot of the earth's surface in which they could be buried."<sup>6</sup>

Generally, Traditionals opposed allotment because they did not believe in private land ownership. They believed that the US wanted to destroy the Cherokee as a self-governed nation, along with their culture and eventually the people themselves. At the same time, most Progressives, and many tribal officials, embraced allotment and assimilation. Many of these people had intermarried with whites and already established large farms, industries, business, and maintained commercial interests. With mixed bloods making up most of the wealthy elite of the tribe, the social

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<sup>5</sup> A term utilized by the tribe, not the author's description.

<sup>6</sup> The term "full blood" is used not only in reference to blood quantum but also those who believed in living according to old Cherokee ways. They are also called traditionalists, which also included some of mixed ancestry. The term "mixed blood" refers to those living as Anglo Americans and favoring complete assimilation. Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln: University of Nebraska Press, 1991), 226; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 65, 76; Conley, *The Cherokee Nation*, 196; Alexandra Harmon, "American Indians and Land Monopolies in the Gilded Age," *The Journal of Land Monopolies in the Gilded Age* 90 (June 2003), 126; Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes* (Orem: Ancestry Incorporation, 1999), 10, 17.

differences intensified with allotment as the traditionalists lived in poverty. While these same divisions occurred with removal from ancestral lands in the east in the 1830s, throughout resettlement in the 1840s, and during the Civil War, the late nineteenth and early twentieth centuries marked the splitting of the factions themselves.<sup>7</sup>

While preparing to enforce allotment, the US passed legislation that eroded sovereignty. The US abolished treaty rights, enabling Congress to rule whatever it deemed best. On May 1, 1871, the Supreme Court decided in the *Cherokee Tobacco Case* that “an act of Congress may supersede a prior treaty.”<sup>8</sup> The US also weakened the role of tribal governments by extending its criminal jurisdiction over Indian Territory with the 1885 Major Crimes Act. In 1889, a federal court opened in the area, eroding tribal control over its own people. In 1898, the Curtis Act officially ended federal recognition of tribal sovereignty for the Five Civilized Tribes. The act terminated their tribal governments and instituted a civil administration for the territory, officially requiring Indians to submit to allotment, which paved the way for statehood. Any legislation passed after 1898 required the approval of the US president. The act allowed the tribal governments to continue in a limited form until the process of allotment finished in 1906.<sup>9</sup>

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<sup>7</sup> Harmon, “American Indians and Land Monopolies in the Gilded Age,” 113, 117, 125; Denson, *Demanding the Cherokee Nation*, 186, 214, 230, 216; Conley, *The Cherokee Nation*, 196, 198; Katherine Mae Rolison, “The Cherokee Nation from Indian Territory to Statehood and the Impact of Allotment: One Family's Story,” (Ph.D. diss., Arizona State University, 2004), 48, 65, 100-01; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 1, 7, 10.

<sup>8</sup> *Cherokee Tobacco Case*, 78 US 616 (US Supreme Court, 1870); William G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (Chapel Hill: University of North Carolina Press, 1993), 267.

<sup>9</sup> Lawrence C. Kelley, *Federal Indian Policy* (New York: Chelsea House Publishers, 1990), 72; US Congress, *The Major Crimes Act. United States Attorney's Manual* (Washington, DC: US Department of Justice, 1997); Rolison, “The Cherokee Nation From Indian Territory to Statehood,” 68; “Treaty with the Cherokees, 1866. July 19, 1866,” In *Indian Affairs: Laws and Treaties, Vol. II Treaties*, edited by Charles J. Kappler (Washington, DC: Government Printing Office, 1904) [hereafter cited as Kappler]; Thomas J. Morgan, “Statement on Indian Policy,” 51<sup>st</sup> Congress, 1<sup>st</sup> sess. House Executive Document 1, pt. 5, Vol II, Serial 725. Washington, DC, pg. 3-4; McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-80*, 376; Harmon, “American Indians and Land Monopolies in the Gilded Age,” 107; Conley, *The Cherokee Nation A History*, 196-7; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*, 23, 33-4, 36, 38; Rolison, “The Cherokee Nation from Indian Territory to Statehood,” 80; US Congress. *The Curtis Act, June 28, 1898*. 55<sup>th</sup> Congress, 2<sup>nd</sup> sess., 1898.

At this time, the Traditionals refused to negotiate with the Dawes Commission. After the Curtis Act, the Dawes Commission received the authority to enroll all citizens and punish anyone hindering their work. The Cherokees attempted to fight the act in court because it violated treaties, but as Congress had ended the treaty making process, many became resigned believing they had no other choice but to negotiate. Despite the act, the Cherokees held an election for principal chief in 1899. Wolf Coon ran under the National Party, which had historically represented full bloods, and Thomas Buffington represented the Downing Party, which had previously worked for reunification after the American Civil War. Buffington won by a majority of about four hundred votes.<sup>10</sup> During his term from 1899 to 1903, Buffington oversaw the final arrangements of allotment and dissolution of tribal government, appointing the seven delegates to meet with the Dawes Commission. As a supporter of the assimilation policy, he spent most of his time attempting to reconcile his people to acceptance of their new status as many full bloods rebelled.<sup>11</sup>

After the Curtis Act, the US needed to complete the process of allotment and extended the Cherokee government until March 6, 1906. Chapter four chronicles the ending of the tribal government and the factional conflicts that continued until the end. William C. Rogers served as chief and labored to finish the allotment process, accepting it as inevitable. He refused to call the last meeting of the National Council or for a final election because the nation would soon be defunct. However, this angered many Keetoowahs, who met and elected Frank J. Boudinot as chief. The US never recognized Boudinot and continued to work with Rogers as if nothing had ever happened. Many Traditionals retreated to their lands and ceased to make contact with the outside world.

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<sup>10</sup> The sources do not reveal the total amount of votes cast.

<sup>11</sup> Cherokee National Council, "An Act Providing for the Appointment of a Commission to Negotiate with the US Commission," December 2, 1898, Box 3, Cherokee Nation Correspondence December 1897 to December 1898, Dawes Commission Records, Indian Archives, Research and Archives Division, Oklahoma Historical Society, Oklahoma History Center, Oklahoma City, Oklahoma [hereafter cited as DC]; US Congress. *The Curtis Act, June 28, 1898*. 55<sup>th</sup> Congress, 2<sup>nd</sup> sess., 1898; John Bartlett Meserve, "Chief Thomas Mitchell Buffington and Chief William Rogers," *The Chronicles of Oklahoma* 17 (June 1939): 135-46;

After 1906, with allotment unfinished and a figurehead needed to sign deeds, the US appointed "chiefs for a day" until 1914. The moniker "chiefs for a day" applied to the presidentially appointed chiefs, who served as mostly powerless figureheads to sign allotment deeds but carry out no other work on behalf of the tribe or their people. The Cherokee split and focused on their survival through the lean times after many were swindled from their allotments and through the Great Depression. In the 1920s, they began to loosely and unofficially organize to care for their people. In the 1930s, the Indian New Deal and Indian Commissioner John Collier sought to return tribal affairs to the American Indians. Though it initially excluded Native Americans in Oklahoma, it laid the foundation for future programs. Finally, the Oklahoma Indian Welfare Act sought to aid the needy within tribes as well as provided a method of obtaining federal recognition under a charter. The last two chapters discuss the Cherokee putting aside their differences and, beginning at the grassroots level, organizing under a single entity to obtain a charter and federal recognition.

The sources for the third chapter explaining the historical context of the tribe up to 1906 derive from Cherokee government documents, US government documents, tribal and Anglo newspapers, interviews obtained during the Federal Writers Project in the 1930s, and letters from tribal leaders. Sources for the early-to-mid twenty-first century are more difficult to obtain. With the US formally abolishing the recognition of the Cherokee government, tribal officials no longer kept records or any documents. The only reliable sources of information are local newspapers, as even the *Cherokee Observer* ceased publication in March 1906. When a Cherokee leader needed to disseminate information to others, they sent their announcement to a local newspaper to print. Very few personal letters exist, with only some documents from the Keetoowah in the University of Oklahoma Western History Collections. Only an assortment of newspaper clippings can be found in the Keetoowah collection at Northeastern State University and at the Oklahoma Historical Society. The archives at the Gilcrease Museum in Tulsa mostly focus on John Ross and the nineteenth century. The tribe itself does not keep records of their earlier history, most of it going to the Oklahoma

Historical Society, which only possessed the Keetoowah Constitution of 1950. Sadly, that leaves newspapers and their reprintings of Cherokee letters and announcements as the most available primary source on this topic. US government documents, such as the Congressional serials and legislation is readily available. Although these documents provide information of treaties and views of the Commissioner of Indian Affairs, they do not record events within the tribe nor do they mention intratribal relations.

As will be explained at the end of chapter five, the Cherokees in charge of the government organized by charter in the 1930s, and those who supported the government dissolved in 1906 by the US remain in conflict today. Both sides argue that they are the true Cherokee government, and today two tribal governments exist and are federally recognized. Both have requirements for citizenship and keep membership rolls, offer public services, and issue license plates. I include but chose not to heavily rely on the interviews of current tribal leaders as they fall on each side of the argument with factionalism strong and their accounts of history very biased. Several have made their positions and histories known on public blogs. Also, several are understandably reluctant to speak with outsiders. Other branches of history, such as World War I and several other eras, must rely on written primary sources as their participants have passed on. I will follow the same methodology. I wish not to exclude the tribal voice and I include it through the letters and writings of those present in the late nineteenth and early twentieth centuries. I simply wish to avoid including the bias from the modern struggle for control of the tribe. A historian's duty is to interpret the sources objectively and without bias, as much as humanly possible. Those involved in politics, such as these faction leaders and those with family on both sides of the fight, know that who writes and controls this history controls the future, which could include land and monetary aspects as well as sovereignty issues. I choose to remain outside of political motivations and chronicle the story of a tribe coming together to save their way of life and sovereignty. This dissertation will chronicle and analyze the resilient leadership that

kept the tribe going in the early twentieth century, incredibly impressive after the violent factionalism of the previous century, without passing judgment as to the status of the two recognized tribes today.

Primary sources for the Keetoowahs, explained later in this work, are difficult to find due to their secrecy. Both the Cherokee Nation and the United Keetoowah governments of today have written their own histories, but both must be analyzed skeptically. For example, due to jurisdictional disputes currently happening, allegations exist that the United Keetoowah Band (UKB) have revised their history to portray them as the descendants of the Western Cherokee that removed from Georgia in 1817. The Cherokee Nation disputes those claims, arguing that no proof to substantiate it exists. The research for this study revealed no evidence to support the UKB's claims. It instead draws on such sources as federal documents, American Indian and Anglo American newspapers, and Cherokee sources. Each are checked against at least one other primary source to prevent false information from altered histories.



## CHAPTER II

### REVIEW OF LITERATURE

This work provides a missing chronicle of the Cherokee to existing historiography by not only covering the early to mid twentieth century but also by discussing their intratribal factionalism and overcoming such conflicts to reorganize under the Oklahoma Indian Welfare Act. However, existing historiography pieces together aspects of the story, such as the histories of American Indians, US federal Indian policy, the Cherokee, and the Keetoowah. This work combines the study of the external pressures on the Cherokee such as federal Indian policy as well as internal pressures on tribal leaders from resulting various reactions.

Early historiography of American Indians, written by white American reformers, chronicled the external pressure and related tribulations endured by tribes due to US federal Indian policies. Included in these studies, along with later historians of US federal Indian policy, are the consequences of such policies for natives during the mid twentieth century. During the 1960s, the rise of the Red Power Movement also gave rise to American Indians publishing their own histories and experiences. Lastly, in the 1990s and 2000s, authors began to combine the history of US Indian policies with the stories of the tribes. This work furthers this trend by chronicling the external pressures from the US federal Indian policies in addition to concurrent internal pressure on tribal leaders from their own people in regards to the best strategy for survival.

Most early writing on American Indians were by anthropologists. Early works on the history of tribes were written by white American reformers who called themselves "friends of the Indian." The authors chronicled the negative consequences of federal Indian policy. They wrote to gain sympathy for the plight of the natives, as well as exposing greed and corruption of the white Americans who capitalized on these policies. An early example is Helen Hunt Jackson's *A Century of Dishonor* (1881). Jackson wrote on the broken treaties, forced removals, and massacres of natives from colonial times to the mid nineteenth century. She remained highly critical of the US treatment of indigenous.<sup>1</sup>

Angie Debo served as the first historian to chronicle the aftermath of assimilation and its negative effects on Oklahoma's indigenous with *And Still the Waters Run* (1940). Controversial at the time of publication due to its exposure of several prominent businessmen profiting from native poverty, *And Still the Waters Run* provided an accurate portrait of the state of Oklahoma Indians in the early twentieth century, living in poverty without their own central government or anyone to advocate for them. Debo's work paved the way for further studies on federal government policies and the effects they had on the people they were supposed to benefit. Debo's work is still cited in historiography of American Indian policies.<sup>2</sup>

Several sources consulted in the research of this work concur with the arguments of Jackson and Debo that US Indian policy did not benefit natives. In addition, some Anglo Americans benefitted monetarily from such legislation. However, such points have been thoroughly argued by Jackson and Debo, as well by later historians of American Indian policy during the 1940s-50s. This issue continues the discussion of the effect of the external pressures, such as assimilationist policies, on the tribe and how the people reacted.

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<sup>1</sup> Helen Hunt Jackson, *A Century of Dishonor: A Sketch of the United States' Government's Dealings with Some of the Indian Tribes* (New York: Harper & Brothers, Franklin Square, 1881).

<sup>2</sup> Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton, NJ: Princeton University Press, 1940).

During the mid twentieth century, historians analyzed the federal policies in detail. Authors such as Frederick Hoxie and Francis Paul Prucha studied the origins and motivations of US political leaders during the passage of legislation. While they agree the policies were disastrous to tribes, the historians fall into two schools of thought: policymakers had good intentions towards indigenous but their policies failed or that politicians sought to end the "Indian" problem as well as personally benefit from the acquisition of native property.

Study of the coexisting US Indian policy illustrates the external pressures natives faced and to which they reacted, sometimes quite differently from one another. After Manifest Destiny, American Indians were rarely left alone by the federal government. The term allotment in historiography and primary sources in the late nineteenth and early twentieth century, refers to the Dawes Allotment Act of 1887. This policy sought to end native communal living and force indigenous peoples to farm their own individual holdings. Allotment was only a specific implementation of the larger US policy, to "assimilate" American Indians into mainstream white society. After abandoning the idea of keeping natives separate from white society on reservations, and with the US population growing and expanding west, the federal government and "friends of the Indians" reformers implemented things such as mandatory Anglo-style boarding schools to force their culture onto young indigenous so they could more easily assimilate into white society.

Francis Paul Prucha's *The Great Father* (1984) serves as the foundational narrative on native-white relations and policy up to 1980. Prucha argued that the federal government, politicians, and reformers were well intentioned in their continuation of paternalism towards Indians. They sought to make Indians "indistinguishable from other kinds of Americans."<sup>3</sup> The author calls the aggressive promotion of assimilation as humanitarian concern for Indians, not just from "Friends of the Indians" but also from the government.

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<sup>3</sup> Francis Paul Prucha, *The Great Father: The United States Government and the American Indian* (Lincoln: University of Nebraska Press, 1984), 231.

Henry E. Fritz's *The Movement for Indian Assimilation* (1963) argued the concept of assimilation emerged amongst the people who moved to the western frontier and witnessed the fraudulent and apathetic management of Indians' affairs. Fritz further clarifies the political nature of assimilation by reviewing the difficulty passing the allotment bill through Congress. He argues that the allotment law depended on western land hunger because western Congressmen would not vote for its passage as just a humanitarian reform measure. In addition, Senator Henry Dawes did not solely author the act named for him, nor did he act as the strongest supporter. According to Fritz, other politicians elected to place Dawes at the front of the issue because several of his constituents were strong supporters of Indian reform and it would gain further support in Congress. Once in Congress, the act required further amendments to pass, with greedy land speculators pushing for application of allotment to all reservations instead of President Cleveland's original intent of applying it to one tribe at a time. Fritz argues that "in order to get the approval of Congress, the Dawes Act compromised some of the finest humanitarian ideals...with the realities of American politics, and was perverted by the latter."<sup>4</sup> Fritz concludes that allotment may have worked if Congress had fully enforced it and the act had remained humanitarian without the unscrupulous compromises made to achieve passage.

William T. Hagan in *American Indians* (1993) also covers assimilation, concluding with Fritz that the sale of surplus lands to white settlers motivated policy makers as well as reformers as a positive influence in the assimilation of natives.<sup>5</sup> Hagan provides charges that several government officials already knew allotment would fail in 1887 because it had been unsuccessful in the mid-1870s with certain tribes, like the Chippewa, who had sold or been defrauded of their land. In *Taking American Indian Lands* Hagan covers the Cherokee during the allotment

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<sup>4</sup> Fritz, *The Movement for Indian Assimilation, 1860-1890* (Philadelphia, PA: University of Pennsylvania Press, 1963), 204, 213.

<sup>5</sup> William T. Hagan, *American Indians* (Chicago, IL: University of Chicago Press, 1961).

processing. He states allotment gained momentum and was widely implemented despite previous failure because “greed and humanitarianism [had] rarely coalesced so beautifully.”<sup>6</sup>

Rose Stremlau's *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (2011) provides the personal histories of families suffering during and after allotment. While beyond the scope of this work as I focus on political history, Stremlau's work covers in greater detail the personal difficulties that the new generation of leaders shared. This dissertation contributes to this line of historiography by illustrating these common experiences greater enabled the Cherokee to band together under a common goal of bettering life for their people and regaining self-determination to achieve this goal.<sup>7</sup>

In regards to the federal Indian policy passed during the time period covered by this work, Jon Blackman in *Oklahoma's Indian New Deal* (2013) provides the most comprehensive chronicle of the Oklahoma Indian Welfare Act (OIWA), as well as the overall Indian New Deal reforms. Instead of focusing on a single tribe, he inserts snippets of statements made during meetings from representatives of various tribes. Attempting to record the reaction of each of the tribes residing in Oklahoma proved too large for a single work, and as is a feat too large for this work. Blackman argues that the biggest impact of the OIWA remains not only that it regained federal recognition, but that it also taught Oklahoma Indians how to function and made decisions through a constitutional government. This work disputes his generalizations of tribes within Oklahoma as the Cherokees had experience with a constitutional republic since the adoption of its first in 1828. Blackman does acknowledge that the Cherokees served as one of the two tribes who organized under the charter provided in the OIWA, but maintains his view that all Indians in

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<sup>6</sup> William T. Hagan, *Taking Indian Lands: The Jerome (Cherokee) Commission, 1889-1893* (Norman, OK: University of Oklahoma Press, 2003), 6. Several other historians cover assimilation policies as well as allotment itself: Cathleen D. Cahill, *Federal Fathers and Mothers: A Social History of the United States Indian Service, 1869-1913* (Chapel Hill, NC: University of North Carolina Press, 2011); Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln, NE: University of Nebraska Press, 2001).

<sup>7</sup> Rose Stremlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill, NC: University of North Carolina Press, 2011).

Oklahoma lacked the experience in this style of government, accounting for the shortcomings of the OIWA.<sup>8</sup>

In regards to the Cherokee specifically, few complete histories of the tribe have been written, despite the tribe adopting a written language and becoming literate in English relatively early in comparison with other native nations. The most comprehensive work is William G. McLoughlin's *After the Trail of Tears*. Andrew Denson's *Demanding the Cherokee Nation* picks up where McLoughlin finishes and comes the closest to the time period of this dissertation. Robert J. Conley's *The Cherokee Nation: A History* (2007) chronicles early Cherokee history. Duane H. King in the introduction of *The Cherokee Indian Nation: A Troubled History* (1979) relates to this work's history of factionalism by briefly mentions that internal political/factional conflict existed before the creation of the nineteenth century Anglo-styled constitution and Trail of Tears. The conflict King describes previous to removal is less organized and on a familial level rather than organized as political parties. The first known disputes began with the consolidation of tribal power from individual villages to a more central, single council. King states that this centralization of power occurred after the emergence of a mixed ancestry class that lived similarly to whites, creating higher and lower economic classes. The existing tribal structure did not suffice to protect tribal property. To protect from the encroachments of whites, the Progressives created a centralized power having more regulation over the behavior of their own people. King also argues that wealthy slaveholders were able to consolidate power to serve their interests because their wealth gained the respect of fellow tribesmen and they also could deal with whites more effectively.<sup>9</sup>

In a less convincing argument, Gerard Reed in "Postremoval Factionalism in the Cherokee Nation" in *The Cherokee Indian Nation* (1979), argues that before removal the

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<sup>8</sup> Jon S. Blackman, *Oklahoma's Indian New Deal* (Norman, OK: University of Oklahoma Press, 2013).

<sup>9</sup> Duane King, ed. "Introduction" in *The Cherokee Nation: A Troubled History* (Knoxville, TN: University of Tennessee Press, 1979).

Cherokees "maintained tribal unity as well as peaceful coexistence with the United States" and that the Indian Removal Act of 1830 "then fragmented the tribe" as the Treaty Party emerged after Jackson refused to enforce the *Worcester v. Georgia* (1832) decision. Also opposite of King, Reed writes less favorably of John Ross, stating he "forced" Elias Boudinot of the Treaty Party to resign his editorial position of the *Cherokee Phoenix* to prevent news to be published that would lift Cherokee morale during the removal crisis. Reed argues that the "underground protreaty faction" worked for the "salvation" of a people they believed would perish unless moved west, painting them as the saviors of the tribe.

Bryan Edward Russell's dissertation, "Writing a Way Home: Cherokee Narratives of Critical and Ethical Nationhood," focuses on the use of Cherokee literature to tell the stories of the marginalized population, specifically queer and freedmen. Russell points out that with the Keetoowah and Traditional opposition to freedmen citizenship and the nation's ban on same-sex marriage affected the tribe's history. Russell's work begins the process of exploring other aspects of Cherokee society and the effect of a constantly transitioning political landscape on all people involved.

Allogan Slagle's *Burning Phoenix: A Study of Federal Acknowledgement, Reorganization, and Survival of the United Keetoowah Band of Cherokee Indians in Oklahoma* (1993) and Georgia Rae Leeds' *The United Keetoowah Band of Cherokee Indians in Oklahoma* serve as the historiography of the Keetoowah. Because the leaders of the unification of the early twentieth century and government that reorganized under the Oklahoma Indian Welfare Act were Keetoowah, these works serve as the few chronicles of the early and mid twentieth century. While Slagle and Leeds focus on the internal aspects of the Cherokee tribe during this time

period, this dissertation adds to historiography by combining the internal aspects as well as external pressures and opportunities all Cherokee faced in the early twentieth century.<sup>10</sup>

Since the 1960s, American Indians have published their own histories. David Cornsilk and Allogan Slagle, members of the United Keetoowah Band, have written and published their tribe's histories. Robert Conley, a member of the Cherokee Nation, has also published *The Cherokee Nation, A Troubled History*. In addition to these authors, autobiographies of important tribal leaders, such as Wilma Mankiller's *Mankiller* serve as insight to tribal politics. This work utilizes native-written narratives when available, such as Mankiller, Cornsilk, and Slagle's publications. Tribal histories by their citizens provide details passed down through oral traditions of their families normally not available to non-indigenous historians.

William G. McLoughlin's *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (1994) serves as a comprehensive study of Cherokee history from its first written constitution in 1828 to the abolition of tribal government in 1906. In addition to studying the US policies toward the indigenous, McLoughlin contributes to historiography by also discussing the social, cultural, and intratribal political ramifications of such policies. He describes the Cherokee as active participants in the policies affecting them and the differing reactions of various groups eventually caused the factionalism of the tribe.<sup>11</sup> McLoughlin studies both the external and internal conflicts leaders of the Cherokee endured, providing context for this work, which begins when McLoughlin ends.

Andrew Denson's *Demanding the Cherokee Nation* (2004) also focused on the late nineteenth century, arguing that the overwhelming majority of people involved in implementing

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<sup>10</sup> Allogan Slagle, *Burning Phoenix: A Study of Federal Acknowledgement, Reorganization, and Survival of the United Keetoowah Band of Cherokee Indians in Oklahoma* (Tahlequah, OK: United Keetoowah Band, 1993); Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York, NY: Peter Lang, 1996).

<sup>11</sup> William G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (Chapel Hill, NC: University of North Carolina Press, 1994).



the policy harbored poor intentions. He asserts that reformers often planned new policies for various non-white peoples to “set them on the road to civilization” by destroying their cultures and familial roles, then leaving the people to ruin when they set their sights on another poor ethnic people.<sup>12</sup> Denson focuses on the intentional cultural genocide, stating politicians purposely endorsed an assault on land held in common, which in turn served as an attack on the main facet of native culture, religion, and way of life. He states that Americans, both reformers and politicians, believed that only after completely stripping natives of their culture could they become integrated American citizens, the purpose of allotment. Denson's work illustrates the extend of what natives faced.

Conley, King, Reed, Russell, Slagle, and Leeds lay the foundation of the history of the Cherokee tribe. Historiography of allotment by Prucha, Fritz, Denson, and McLoughlin prove important to this work as they provide the context of the assimilation policies that rendered the tribes impoverished. After losing lands, the natives then lost their tribal governments, which would have helped them navigate these trying times. This dissertation picks up where previous historiography ends in the early twentieth century with the abolition of tribal governments. Previously, native leaders had to contend with the external pressures of US federal Indian policies as well as resulting hardships from removal west, the American Civil War, and allotment. Internal pressures erupted as factions emerged from differing reactions and strategies in handling these events. In the twentieth century, leaders either found themselves resigned to assimilation or vowed to continue fighting allotment. The loss of land and rampant poverty became a shared experience of a new generation of leaders.

After failing to secure separate statehood, tribal governments ceased operation and natives found themselves struggling with day to day survival. Those who refused to keep fighting, as well as later those who accepted allotment, continued a form of de facto government on a

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<sup>12</sup> Denson, *Demanding the Cherokee Nation*, 202.

community level to continue caring for their people. In 1905 the Keetoowah organize as a business under a corporate charter in order to continue suing the US for funds owed to the tribe. Later, these community level groups, facing the same external pressures of survival without a tribal government and during the aftermath of allotment, work together to create a cohesive unit for all of their people. This coalition of leaders proves advantageous and enables the Cherokee to capitalize on the passage of favorable US Indian policies during the Indian New Deal from the 1930s-50s.

The works of Prucha, Hoxie, Fritz, Hagan, Denson, and McLoughlin demonstrate that the external issues of assimilation heightened factionalism within the tribe as natives reacted in various ways and differed on the best strategy for survival. This dissertation uses the context of these works to show that while previously external pressures led to internal crises, with the new generation of leadership with a shared experience in assimilationist policies and the abolition of their government, the factions of the tribe came together to work for the benefit of all their people.

Previous historiography ends after the Curtis Act takes effect for several reasons. First, sources are scarce after the abolition of tribal government. Without a centralized institution keeping records, legal documents, petitions, and personal papers of tribal politicians ceased to be recorded. After 1906, if information needed to be disseminated to the Cherokee people, leaders would publish their writings in local newspapers. As a result, local newspapers provided the bulk of native sources. Tribal and museum archives do not possess personal letters or writings of the Cherokee from this time period, most likely from the focus on day to day survival by the people. A later interview of Keetoowah leader Levi Gritts was taken in the mid twentieth century and serves as one of the only written firsthand account of the time period by a Cherokee. A lack of sources causes the research of this time period to be very difficult, spotty, and tedious.

Secondly, many policies affected several tribes at once and it remains difficult to speak on one tribe without including concurrent events with others. For example, allotment affected many more tribes other than the Cherokee but the experience and reaction of the people varies from tribe to tribe. Some policies included two unrelated tribes together, such as settling on the same lands, while at the same time another act may include another two tribes. This creates confusion in not only research but also in writing a coherent narrative of a manageable length.

The events of the early twentieth century are also utilized today in the struggle for authority between two factions of the Cherokee. As a result, many histories are told in a biased manner, contradictory to each other and favoring each group's right to tribal control. The Cherokee Nation cites itself as the same, continuous government created by the constitution in 1828. The UKB argues that the government created in 1828 ended when the Curtis Act abolished it in 1906. The Keetoowah government, recognized by federal charter then with an approved constitution in 1950, served as the tribal authority. Historians have not fully examined the logic of both sides and individual Cherokees cite one history over the other, usually depending on their personal membership. Other historians indirectly comment on the two governments by only mentioning one in their conclusion, usually that of the Cherokee Nation. Rose Stremlau concludes her work by stating that the Cherokee had no formal government until the new constitution in the 1970s. Jon S. Blackman briefly quotes other tribes as having disputes over whether Progressives or Traditionals should run their new governments, but does not go into detail or mention that of the Cherokees. The lack of historiography likely occurs because of the previously mentioned lack of sources as well as strong personal biases within the tribe.

Lastly, general American Indian history of the early twentieth history is also scarce. Once tribal governments are abolished, not much is written on natives. Historiography covers code talkers and native participation in the world wars, as that topic has much more sources available. This dissertation not only fills in the deficit of native history in the early twentieth century, it also

chronicles the importance of previously contentious relations shifting to amicable cooperation under intense external pressure from assimilation policies. During a low point of Cherokee history including destitution and a lack of tribal government, leaders used their shared experience to cooperate and organize at the grassroots level to care for their people and regain self-determination. As a result, the Cherokee were better prepared to take advantage once more favorable US Indian policy emerged.

## CHAPTER III

### FROM WHENCE WE CAME: FACTIONALISM AND THE CHEROKEE NATION, 1828-1906

Throughout United States history, Cherokee self-determination faced repeated threats as the federal government demanded land, jurisdiction over natives, and submission. Prior to the 1920s, disagreements and factions within the tribe resulting from varying reactions to these external pressures enabled the US to capitalize on the fragmented tribe and reduce self-determination. This ultimately led to the dissolution of tribal governments in 1906. In addition to providing historical context, this also illustrates the shared experiences of the pre-twentieth century faction leaders. These early generations endured and faced the external pressures of the Trail of Tears, involvement in the American Civil War, encroachment of white settlers, allotment of their lands, and disastrous assimilationist policies. The resulting infighting amongst factions not only weakened the tribe's negotiating power with the US, it also created feelings of betrayal and feuds along factional and familial lines. These conflicts prevented intratribal cooperation as leaders and their immediate descendents harbored decades long grudges. In studying the sometimes violent intratribal factionalism prior to the twentieth century, it greater emphasizes the importance and magnitude of the cooperation and coalition of the leaders in the 1920s.

To fully appreciate and understand the difficulty and importance of the conflict the Cherokees put aside in the 1920s, it is instructive know the history of the tribe and the magnitude of the sometimes deadly conflict between opposing sides within the tribe that had been an issue

since the early nineteenth century. After the creation and approval for an Anglo-style centralized republic in the early-nineteenth century, the tribe quickly split into two factions regarding forced removal to the western United States. This created opposing sides that would affect the tribe until the early twentieth century. The leaders of the early twentieth century had to not only overcome the dissolution of federal recognition and relations with their tribal government, they also had to heal the fissures of several generations.

In 1827, the Cherokee approved the constitution for a centralized republic, planned and created by a group of elite men. The twelve drafters of the constitution did not represent the majority of the tribe, most coming from wealthy mixed race families. All but one owned slaves. The traditional practice of women and children as part of decision making, and consensus as the method of political discourse disappeared.<sup>1</sup>

The new tribal government consisted of three branches: the legislative branch with two councils, judicial that included a supreme court, and the executive branch of the principal chief. The only major discernible difference from the US was the legislature chose the principal chief.<sup>2</sup>

This new republic marked a shift in the types of leaders of the nation. Previously, the tribe was led by the local heads of clans of the villages rather than a single, centralized chief. Many in the tribe adopted the agricultural and educational system of their white neighbors,

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<sup>1</sup> Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Los Angeles, CA: University of California Press, 2005), 105-06.

<sup>2</sup> Cherokee Constitution, 1827, New Echota, Document tl217, Tennessee Documentary History, 1796-1850. University of Tennessee Digital Library Database, Collections of University of Tennessee, Knoxville, Tennessee; Cherokee Nation, *The Constitution and Laws of the Cherokee Nation, Passed at Tah-Le-Quah, Cherokee Nation, 1839* (Wilmington: Scholarly Resources Incorporated, 1975); Faye Yarbrough, lecture, September 10, 2009, University of Central Oklahoma, Edmond, Oklahoma; Miles, *Ties That Bind*, 105, 108, 111; Carolyn Johnston, *Cherokee Women in Crisis: Trail of Tears, Civil War, and Allotment* (Tuscaloosa, AL: University of Alabama Press, 2003), 38; Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty* (Norman, OK: University of Oklahoma Press, 2004), 33, 43, 45; Theda Perdue and Michael D. Green, *The Cherokee Removal: A Brief History with Documents* (New York: Bedford Books of St. Martin's Press, 1995), 14; Kerry K. Wynn, "The Embodiment of Citizenship: Sovereignty and Colonialism in the Cherokee Nation, 1880-1920," Ph.D. diss., University of Illinois, 2002, 87.

creating a different faction of the Cherokees, often called "Progressives" or "Mixed Bloods." Others, who retained their culture and lived as their ancestors with very little contact with Anglo Americans, became known as "Traditionals." The Progressives took leadership of the nation under the new constitution, with their influence stemming from personal wealth and the practice of interacting with whites, a skill greatly needed with increasing Anglo settlers in the Cherokee Georgia homelands. A large number of Progressives also adopted a system of plantation slavery similar to the southern states. However, these Cherokee planters avoided much of the cruelty and abuse displayed by white slaveholders. After traders came to live within the nation, intermarriage and full acceptance of mixed offspring inheriting their father's estates led to a wide inequality of wealth within Indian society. According to Duane H. King, this disparity not only separated the people by lifestyle and created different economic classes, it also resulted in envy and spurred on acquisitiveness previously unknown in Cherokee culture.<sup>3</sup>

This split into two factions continued throughout the nineteenth and early twentieth centuries, and the remnants can be seen today. Traditionalists, also referred to as "full bloods" within the tribe and in US government agents' descriptions, wished to maintain their culture and resisted any changes and adoption of Anglo culture. The Progressives, also referred to as "mixed bloods" by the same parties, lived apart from the rest of the tribe and attended eastern US schools, striving to adopt American practices by women following the cult of domesticity and men farming. They embraced change as inevitable and formed a new wealthy elite class within the tribe. Many of these privileged believed sovereignty depended on the US viewing them as civilized and similar to white society. By 1835, seventy five percent of all "full blood" Cherokees

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<sup>3</sup> *The Cherokee Phoenix*, April 24, 1828, microfilm roll 30,820, Newspaper Collection, Research and Archives Division, Oklahoma History Center, Oklahoma City, Oklahoma [hereafter cited as NWS OHS]; Norgren, *The Cherokee Cases*, 48; Miles, *Ties that Bind*, 104, 106; William G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-80* (Chapel Hill, NC: University of North Carolina Press, 1993), xii; Theda Perdue, "Cherokee Planters: The Development of Plantation Slavery before Removal," in *The Cherokee Indian Nation: A Troubled History* (Knoxville, TN: University of Tennessee Press, 1979), 110.

maintained matrilineal traditions and the majority of the tribe did not adopt Anglo lifestyles. These differences created conflict within the tribe, mostly along the lines of class and ancestry. The former leaders, the conservative and traditional town elders, could only attempt to persuade the Progressives. John Ross, a mixed heritage statesman of the tribe, became principal chief on October 1828.<sup>4</sup>

As with nearly every tribe, the time comes when the indigenous are dispossessed of their land, which also challenges their self-determination. Shortly after approving their constitution, Georgia settlers began coveting native land. The Cherokee had hoped that since their government and constitution reflected that of the US, they could appear more "civilized" and prevent removal.<sup>5</sup> However, at the time, the US Indian policy sought to move the natives west onto reservations, separate from Anglo Americans. At the same time, the state of Georgia also began pushing for their removal due to the desire for new territory and the discovery of gold. Georgians passed anti-Indian laws, such as annexing native lands for distribution via lottery and declaring Cherokee laws void. In addition, settlers illegally squatted on native land in hopes to persuade the Cherokee to sign a treaty agreeing to move west. In 1826-1827, the Georgia General Assembly passed resolutions asserting its complete domination over the land and people within its borders, including native people.<sup>6</sup>

In addition to the actions of the state of Georgia, US President Andrew Jackson convinced Congress to approve the Indian Removal Act to move tribes to reservations in western America. The majority of Cherokee did not support removal, and the tribal government sent delegations to Washington, DC, to negotiate. In light of attacks from the state of Georgia, white

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<sup>4</sup> Johnston, *Cherokee Women in Crisis*, 50-1, 55; Perdue and Green, *Cherokee Removal*, 13; Melinda C. Miller, "Essays on Race and the Persistence of Economic Equality" (Ph.D. diss., University of Michigan, 2008), 6.

<sup>5</sup> Norgren, *The Cherokee Cases*, 43; Miles, *Ties that Bind*, 114; Johnston, *Cherokee Women in Crisis*, 39; *The Cherokee Phoenix*, June 11, 1828, NWS OHS; Toney, "Divided We Fall," 43.

<sup>6</sup> *The Cherokee Phoenix*, November 26, 1828, NWS OHS; Perdue and Green, *Cherokee Removal*, 18, 61-2; Leonard W. Levy, Kenneth L. Karst, and Adam Winkler, eds. *Encyclopedia of the American Constitution* (Macmillan Reference, 2000), 344.



invaders, and the federal government, Chief John Ross decided to use the US judicial system to fight removal, resulting in two landmark cases that would dictate the status of tribal sovereignty and be the basis of further laws regarding the indigenous: *Cherokee Nation v. Georgia* and *Worcester v. Georgia*.<sup>7</sup>

At the time, the US did not have a distinct Indian policy, making the cases even more important as they established the precedent for future US-indigenous relations throughout the nineteenth century. The Cherokees hired American lawyers more versed in US law and hoped to prove that Georgia had acted illegally by violating the tribe's sovereignty. Previous treaties recognized the tribe and others as a "nation within a nation."<sup>8</sup>

*Cherokee v. Georgia* (1831), resulted from a southern state arresting a Cherokee within tribal lands for murder, trying him in American courts, and executing him. The tribe argued that state laws held no validity within tribal borders because it was "nation within a nation" according to the commerce clause of the constitution. The Cherokees also sought a ruling that would further restrict the state from enforcing any of its laws over the natives. In the final ruling, the court decided four to two to deny Cherokee jurisdiction on the grounds that it did not consider them a foreign state according to the constitution's use of the term. Chief Justice John Marshall defined the Cherokees as a "dependent, domestic nation" not a separate, sovereign country. This ruling affected the tribe from this time forward as it defined the natives' status as wards of the US government. Marshall also conferred that the Supreme Court had no jurisdiction to hear a

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<sup>7</sup> *The Cherokee Phoenix*, December 16, 1828. [NWS OHS]; *Cherokee Nation v. Georgia*, 30 US 1 (U.S. Supreme Court, 1831); *Worcester v. Georgia*, 31 US 515 (US Supreme Court, 1832); Norgren, *The Cherokee Cases*, vii-viii, 47.

<sup>8</sup> *Cherokee Nation v. Georgia*, 30 US 1 (US Supreme Court, 1831); *Worcester v. Georgia*, 31 US 515 (US Supreme Court, 1832); Minnesota Indian Affairs Council, "American Indian Tribal Sovereignty Primer," Minnesota Indian Affairs Council, American Indian Research and Policy Institute, University of Minnesota, Minnesota Extension Service, Center for Regional and Urban Studies [hereafter cited as American Indian Sovereignty Primer]; Norgren, *The Cherokee Cases*, 3, 7, 9, 49, 57; David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman, OK: University of Oklahoma Press, 2002).

Cherokee request to interfere with Georgia's laws. This proved a setback for the tribe and only a year later Marshall would modify their ward status.<sup>9</sup>

*Worcester v. Georgia* (1832) stemmed from the arrest of several American missionaries in the Cherokee Nation for violating the Georgian law that required all Anglos wishing to reside within tribal lands to apply for a permit and swear an oath to the state. The law violated the tribe's right to regulate immigration within their own borders.<sup>10</sup>

Chief Justice Marshall again led this case, ruling that Georgian laws were void because they violated federal treaties, contract and commerce clauses of the constitution, and the sovereign authority of the Cherokee Nation. Marshall defined the tribe as a "distinct political society," capable of self-government, and endorsed the right to their land.<sup>11</sup> A victory for the tribe, *Worcester v. Georgia* dictated that a state could not impose laws on the tribe. Marshall commented that only Congress was granted an overriding power in American Indian affairs. Additionally, he dictated that tribes did not lose their sovereign powers by becoming subject to the US government.<sup>12</sup> This ruling marked the validity of the laws of the Cherokee Nation as well as prevented the states from passing discriminatory laws that would override tribal legislation.

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<sup>9</sup> *Cherokee Nation v. Georgia*, 30 US 1 (US Supreme Court, 1831); *Worcester v. Georgia*, 31 US 515 (US Supreme Court, 1832); Perdue and Green, *Cherokee Removal*, 68, 689; "Biographical Sketch of William Wirt," Box 18, Folder 1, Collection Number 2006.20, Gary Moulton Papers, 1807-66, Research and Archives Division, Oklahoma History Center, Oklahoma City, Oklahoma [hereafter cited as GMP]; McLoughlin, *After the Trail of Tears*, xiv; Norgren, *The Cherokee Cases*, viii; American Indian Tribal Sovereignty Primer; Lomawaima and Wilkins, *Uneven Ground*, 9; Levi and Karst, eds., *Encyclopedia of the American Constitution*, 344.

<sup>10</sup> *Worcester v. Georgia*, 31 US 515 (US Supreme Court, 1832); American Indian Tribal Sovereignty Primer; Norgren, *The Cherokee Cases*, viii, 1-2; Levy, Karst, Winkler, eds., *Encyclopedia of the American Constitution*, 344.

<sup>11</sup> Andrew Jackson, *Message to Congress*. December 3, 1833. *House Executive Documents*. 23<sup>rd</sup> Cong., 1<sup>st</sup> sess. Washington, DC: Gales and Seaton, 1833; Norgren, *The Cherokee Cases*, 48-51; *The Cherokee Phoenix*, December 30, 1829 [NWS OHS]; Perdue and Green, *Cherokee Removal*, 19; Levi, Karst, Winkler, eds., *Encyclopedia of the American Constitution*, 344.

<sup>12</sup> *Worcester v. Georgia*, 31 US 515 (US Supreme Court, 1832); American Indian Tribal Sovereignty Primer; Levy, Karst, Winkler, eds., *Encyclopedia of the American Constitution*, 344; Perdue and Green, *Cherokee Removal*, 19, 69.

Despite the victory in the Supreme Court, removal of natives west remained an issue, especially with Andrew Jackson determined to move them west. Jackson maintained that the state retained its sovereign right over all land and people within territory as a "nation within a nation" could not exist. The president refused to regard any previous treaties or to end Georgia's anti-Indian actions. Without the support of the executive branch, the Supreme Court could not enforce its ruling. Georgia continued its actions, going as far as to distribute tribal land to settlers via a lottery.<sup>13</sup>

Like most Anglo Americans, Jackson believed in the inevitability of the extinction of the indigenous as they could not compete with whites. In the paternalist attitude that served as the foundation of US Indian policy, Jackson based his argument in Congress for removal west as a benevolent action to give the tribes a last chance to assimilate away from the harassment of settlers. On May 28, 1830, the Indian Removal Act became law.<sup>14</sup>

Under the act, the president created an Indian Territory on public lands west of the Mississippi River, which the US guaranteed as the property of the natives as long as they inhabited the area. Regarding self-determination, the tribes removed would forever be free of the jurisdiction of the any territory or state. Lastly, the act granted legal title to the new land, and provided funding for removal west.<sup>15</sup>

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<sup>13</sup> Andrew Jackson, *Message to Congress*. December 3, 1833. *House Executive Documents*. 23<sup>rd</sup> Cong., 1<sup>st</sup> sess. Washington, DC: Gales and Seaton, 1833; *The Cherokee Phoenix*, December 30, 1829 [NWS OHS]; Perdue and Green, *Cherokee Removal*, 19; Levy, Karst, Winkler, eds., *Encyclopedia of the American Constitution*, 344.

<sup>14</sup> Andrew Jackson, *Message to Congress*. December 3, 1833. *House Executive Documents*. 23<sup>rd</sup> Cong., 1<sup>st</sup> sess. Washington, DC: Gales and Seaton, 1833; Norgren, *The Cherokee Cases*, 48-51; *The Cherokee Phoenix*, December 30, 1829 [NWS OHS]; McLoughlin, *After the Trail of Tears*, xii, 1-3; Perdue and Green, eds. *Cherokee Removal*, 16-8; "Biographical Sketch of William Wirt," Box 18, Folder 1 [GMP].

<sup>15</sup> Congress. *Indian Removal Act of 1830*. 21<sup>st</sup> Cong., 1<sup>st</sup> sess. Library of Congress, <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=004/llsl1004.db&recNum=458> (accessed October 27, 2009); Norgren, *The Cherokee Cases*, 85; *The Cherokee Phoenix*, July 21, 1828 [NWS OHS]; *The Cherokee Phoenix*, December 30, 1829 [NWS OHS]; McLoughlin, *After the Trail of Tears*, xi.

An important clause of the Indian Removal Act required the American Indians to demonstrate they were moving willingly by signing a removal treaty. With the Cherokee Nation officially refusing to agree, the US exploited the intratribal factionalism of the people by working only with those most agreeable to removal regardless of a lack of tribal authority.

The Cherokees had been debating the subject of removal among themselves for quite some time. The *Cherokee Phoenix* tribal newspaper kept the citizens informed of other tribes' experience with removal, the varying sentiments of natives, as well as coverage from Anglo newspapers. It reported that "the popular feeling of the Nation [was] decidedly opposed to a removal."<sup>16</sup> Those opposed, mostly still living traditionally, refused to move west and Cherokee Chief John Ross urged his people to resist removal by every means short of violence. The National Council met and officially voted against removal.<sup>17</sup>

However, not all Cherokees opposed removal. A different group than those who supported the Treaty of New Echota, some Progressives (known as Old Settlers) accepted early US offers and moved west earlier in the nineteenth century, believing it the only way to live without white interference. As pressure from the US increased, the tribe began passing anti-removal legislation in order to maintain a united front. On November 17, 1828, the General Council decreed that any persons who abandoned their homes and moved west forfeited their citizenship. The tribe passed a law on October 24, 1829, making it illegal to sell treaty lands belonging to the nation without tribal government approval punishable by the death penalty. This created the foundation for later violence and deepened the fissures between factional leaders.<sup>18</sup>

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<sup>16</sup> Norgren, *The Cherokee Cases*, 85; *The Cherokee Phoenix*, July 21, 1828 [NWS OHS].

<sup>17</sup> Congress. *Indian Removal Act of 1830*. 21<sup>st</sup> Cong., 1<sup>st</sup> sess. Library of Congress, <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=004/llsl1004.db&recNum=458> (accessed October 27, 2009; *The Cherokee Phoenix*, June 11, 1828 [NWS OHS]; McLoughlin, *After the Trail of Tears*, 2; Kenneth Penn Davis, "Chaos in the Indian Country: The Cherokee Nation, 1828-35," in *The Cherokee Indian Nation: A Troubled History* (Knoxville, TN: University of Tennessee Press, 1979), 130.

<sup>18</sup> *The Cherokee Phoenix*, July 19, 1828[NWS OHS]; *The Cherokee Phoenix*, November 4, 1829 [NWS OHS]; *The Cherokee Phoenix*, January 20, 1830 [NWS OHS]; Perdue and Green, eds. *Cherokee Removal*,

In December 1829, the Cherokee people gathered to sign and send the "Memorial of the Cherokees" to Congress as well as circulate it throughout their citizens. The petition held more than three thousand signatures and asked the legislative branch of the federal government to halt the actions of the state of Georgia and Jackson. Ross and other leaders traveled to Washington, DC, several times in attempt to stop removal. Their efforts fell upon deaf ears.<sup>19</sup>

As thousands of Georgians moved into Cherokee country in the early 1830s, a minority of the tribe began to grow hopeless. They looked to tribal politicians John Ridge, Major Ridge, and Elias Boudinot. These men formed a faction, called the Treaty Party, consisting of those who believed their people had no choice but to move west. They thought the petitions and negotiations with the US futile and sought to move west and perhaps get a better agreement if they left willingly. The US took advantage of this discourse, stating that those who agreed to enroll for removal would have an easier time of an evitable fate. With a constant influx of white settlers, they believed that removal remained the only way for the tribe to continue unmolested.<sup>20</sup>

The Treaty Party, or Progressives, consisted of natives that were most often but not always of mixed ancestry. They were most assimilated into Anglo American society, often educated in federal Indian schools and literate in English, owning slaves, and considered the wealthy elite. In addition, they embraced Christianity and frequently interacted with whites as neighbors. The Treaty Party's members were separated from most of the rest of the tribe not just by heritage but also by how they lived, and as monetary class. They believed, similar to the policy

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14; The Cherokee Blood Law, October 24, 1829, *The Cherokee Observer*, <http://www.cherokeeobserver.org/Issues/bloodlaw.html> (accessed September 18, 2017); Paul Johns, "The Ridge Family and the Cherokee Blood Law," *The Christian County Headliner News*, August 28, 2011, [http://ccheadliner.com/news/the-ridge-family-and-the-cherkee-blood-law/article\\_0a4498fc-cdbc-11e0-ab88-001cc4c03286.html](http://ccheadliner.com/news/the-ridge-family-and-the-cherkee-blood-law/article_0a4498fc-cdbc-11e0-ab88-001cc4c03286.html) (accessed September 18, 2017); Davis, "Chaos in the Indian Country: The Cherokee Nation, 1828-35," 130; Gerard Reed, "Postremoval Factionalism in the Cherokee Nation," in *The Cherokee Indian Nation: A Troubled History* (Knoxville, TN: University of Tennessee Press, 1979), 148-49.

<sup>19</sup> *The Cherokee Phoenix*, December 30, 1829[NWS OHS]; *The Cherokee Phoenix*, January 20, 1830, [NWS OHS]; "Memorial and Protest of the Cherokee Nation," Folder 5, Box 3 [GMP]; Davis, "Chaos in the Indian Country: The Cherokee Nation, 1828-35," 130.

<sup>20</sup> Davis, "Chaos in the Indian Country: The Cherokee Nation, 1828-35," 142.

of assimilation, that a better future would result from incorporation with white society rather than remaining separate from it. Additional political contention resulted from the defeat of several Progressive leaders in the 1830 elections, with John Ridge especially resentful of his loss to John Ross for the office of chief.<sup>21</sup>

The Cherokees who remained resisted the Indian Removal Act by staying on their homelands and refusing to sign any removal treaties were known as the Traditionalists or Ross Party, as the chief led them. While the Progressives lived amongst whites and participated in their economic system, the Traditionalists preferred to live together, apart from Anglo American society, maintaining their traditional culture. Often without any mixed ancestry, those who followed Ross often lacked formal education and lived at a lower economic class. Circe Sturm argues that while American Indian resistance to the US has been centered around issues of autonomy, sovereignty, and self-determination, "racial identity becomes a rallying point of collective resistance as well as a sources of political and social factionalism."<sup>22</sup> While racial ideologies have played a role, not all in the Ross Party had no mixed ancestry and vice versa for the Progressives.<sup>23</sup>

Chief Ross headed the delegation that traveled to Washington, DC, to negotiate with the US. Ross planned to sell only a small portion of their land, believing then the federal government would be appeased and not force them to move. Ridge also sent a delegation to discuss removal in 1835. Both factions returned to Cherokee Nation, and at its October 1835 annual meeting in Red Clay, Tennessee, the National Council rejected Ridge's proposed treaty of removal.<sup>24</sup>

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<sup>21</sup> Perdue and Green, eds. *Cherokee Removal*, 19; Toney, "Divided We Fall," 55; Jon S. Blackman, *Oklahoma's Indian New Deal* (Norman, OK: University of Oklahoma Press, 2013), 56;

<sup>22</sup> Circe Sturm, *Blood Matters: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*. Los Angeles: University of California Press, 2002), 17; Blackman, *Oklahoma's Indian New Deal*, 56.

<sup>23</sup> For further reading on race and Cherokee history, see Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*.

<sup>24</sup> Perdue and Green, eds. *Cherokee Removal*, 20; Proceedings of the General Council at Red Clay Council, May 16, 1935. Folder 5, Box 3 [GMP]; John Ross Papers, 1835-7, Folder 2-3, Box 3[GMP].

Despite having their proposal denied and having no authority from the tribe, the Treaty Party met with a treaty commissioner in December 1835 at New Echota, Georgia. One hundred Treaty Party members eventually signed the Treaty of New Echota, agreeing to sell all Cherokee homelands and move west. The treaty agreed to a full cession of all lands and removal to Indian Territory by 1838 in exchange for five million dollars, transportation to the west, and subsistence aid for one year after arriving at their new homelands. Leaders of the Treaty Party received rewards for their willingness to negotiate and the Georgia governor exempted the Ridges and Boudinot from having their land distributed via lottery. The treaty passed the US Senate by a one-vote margin. The US had finally gotten an agreement from the Cherokees to move, even though the signers held no authority within the tribe.<sup>25</sup>

Ross and other leaders had been negotiating in Washington, DC, against removal and did not find out their lands had purportedly been sold until they returned. The betrayal shocked Ross and the majority of Cherokees. The tribal government acted quickly in an attempt to delegitimize the opposition by impeaching the Ridges from the National Council and forcing Boudinot to resign as editor of the *Cherokee Phoenix*. Ross and his followers protested the treaty and petitioned the US Senate to reject it. Even though only a few tribal members signed the treaty, it committed all of the Cherokees to removal, resulting in the death and hardship now known as the Trail of Tears. Despite the petition, the Senate ratified the treaty in 1836 and the US began setting up stockades to imprison the people in anticipation of removal in 1838. The Trail of Tears removed 16,000 Cherokees and killed about 4,000.<sup>26</sup>

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<sup>25</sup> McLoughlin, *After the Trail of Tears*, 2; Perdue and Green, eds. *Cherokee Removal*, 19-20; "Treaty with the Cherokee, 1835. Dec. 29, 1835. 7 Stat., 478. Proclamation, May 23, 1836." In *Indian Affairs: Laws and Treaties, Vol. II Treaties*, edited by Charles J. Kappler (Washington, DC: Government Printing Office, 1904) [hereafter cited as Kappler]; Joel Poinsett, Letter to John Ross, May 24, 1837. Folder 6, Box 3, [GMP]; John Ross, "Address to the Senate." March 8, 1836. Folder 4, Box 3 [GMP]; Major John Ridge, Letter to John Ross, February 6, 1836. Folder 4, Box 3 [GMP]; Reed, "Postremoval Factionalism in the Cherokee Nation," 149-50.

<sup>26</sup> Perdue and Green, eds. *Cherokee Removal*, 19-20; John Schuermerhorn, Letter to John Ross, October 28, 1835. Folder 2, Box 3 [GMP]; John Ross, Address to the General Council, May 18, 1835, Folder 1, Box 3

After arriving in Indian Territory, the Cherokees still considered themselves a sovereign nation and vowed to keep negotiating with the US to receive further reparations for their suffering and survival. With external pressures of removal finished, leaders faced the aftermath in the form of internal issues with three factions claiming authority over the entire tribe.

Once the Ross Party arrived in Indian Territory, they realized that three separate factions, developed prior to and during removal, existed and considered themselves independent. To recreate a single, unified, stronger Cherokee Nation, the three groups would have to negotiate and compromise. Otherwise whenever the US wanted an agreement, they would just recognize whichever faction was most agreeable to its goals.<sup>27</sup>

Upon arriving in Indian Territory, Ross and his followers, around 14,000 people known as the Eastern Cherokees, found a pre-existing tribal government of Cherokees. This group, known as the Western Cherokees, or the Old Settlers, had willingly moved in the late-eighteenth and early-nineteenth centuries. The Old Settlers had their own simple system of government with three chiefs, a council, few written laws, and no constitution. The Old Settlers government met only twice a year in their capital, Tahlontusky, to elect chiefs and national officers (council members), judges, and lighthorsemen (police). Led by chiefs John Brown, John Looney, and John Rogers, the Western Cherokees only constituted one-third of the entire Cherokee population.<sup>28</sup>

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[GMP]; Miller, "Essays on Race and Persistence of Economic Equality," 8; McLoughlin, *After the Trail of Tears*, xiii, 2; Perdue and Green, eds. *Cherokee Removal*, 56-7.

<sup>27</sup> McLoughlin, *After the Trail of Tears*, 5-6; Sturm, *Blood Politics*, 65; Reed, "Postremoval Factionalism in the Cherokee Nation," 150.

<sup>28</sup> Treaty with the Western Cherokee, 1828. May 6, 1828. 7 Stat., 311. Proclamation, May 28, 1828 [Kappler]; John Ross Papers [GMP]; Electra Clark, *Cherokee Chief: The Life of John Ross* (London: Collier-Macmillan Limited, 1970), 81; William L. Anderson, ed. *Cherokee Removal: Before and After* (Athens, GA: University of Georgia Press, 1991), 113; Sturm, *Blood Politics*, 65; Thurman Wilkins, *Cherokee Tragedy: The Ridge Family and the Decimation of a People* (New York: The MacMillan Company, 1970), 316; Mary Evelyn Rogers, *Ani-Yun-Way: A Brief History of the Cherokees, 1540-1906* (Baltimore, MD: Gateway Press, 1986), 200; Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque, NM: University of New Mexico Press, 2005), 159; McLoughlin, *After the Trail of Tears*, 4-5, 10; Reed, "Postremoval Factionalism in the Cherokee Nation," 150. Despite the efforts of the US to remove all Cherokees west, some were able to remain. They resided in North Carolina and formed the



Already in the Indian Territory, the Treaty Party, led by John Ridge, lived peacefully amongst the Old Settlers. However, with the signers of the Treaty of New Echota and the Ross faction in the same area, civil war erupted among the tribe, making reunification nearly impossible. The leaders of the Progressives did not believe they had betrayed their people. In a likeness to the US paternalism, the Treaty Party thought they were doing the best for their tribe by separating them from the violence and encroachment of the white population while they learned to assimilate into American society.<sup>29</sup>

The Treaty of New Echota failed to specify how the separate Cherokees should govern themselves. Since the US continued to allow the tribe to select its own leaders, the people remained fully responsible for unification. Each faction maintained its own ambitions and self-serving motivations, none of which blended with the other groups. Before removal, Ross and the Eastern Cherokees asserted that their government would continue in full force in Indian Territory. Upon arrival, they reinstituted their bicameral legislature and judicial system. A complication arose from an 1819 action in which the Eastern Cherokees had legally disowned those who moved west early, refusing to recognize the Old Settlers as a separate nation. In turn, the Old Settlers believed themselves the only legitimate government of the Cherokees in Indian Territory and challenged the newcomers' authority.<sup>30</sup>

However, the Treaty Party and the Old Settlers combined smoothly. The Treaty Party arrived a short time before the Ross Party, and agreed to mix into the Western Cherokee, also

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Eastern Band of Cherokees. This group still exists today. Not within the scope of this dissertation, an extensive historiography already exists regarding the separate band, including Duane King's "The Origin of the Eastern Cherokees as a Social and Political Entity," in *The Cherokee Indian Nation: A History* (Nashville, TN: University of Tennessee Press, 1979).

<sup>29</sup> Treaty with the Western Cherokee, 1828. May 6, 1828. 7 Stat., 311. Proclamation, May 28, 1828 [Kappler]; John Ross Papers [GMP]; Clark, *Cherokee Chief*, 81; Anderson, ed. *Cherokee Removal*, 113; Sturm, *Blood Politics*, 65; Wilkins, *Cherokee Tragedy*, 316; Rogers, *Ani-Yun-Way*, 200; Conley, *The Cherokee Nation*, 159; McLoughlin, *After the Trail of Tears*, 4-5, 10.

<sup>30</sup> Treaty with the Cherokee, 1835. Dec. 29, 1835. 7 Stat., 478. Proclamation, May 23, 1836 [Kappler]; Conley, *The Cherokee Nation*, 159; McLoughlin, *After the Trail of Tears*, xiii, 2-5; Anderson, ed. *Cherokee Removal*, 113; Sturm, *Blood Politics*, 65; Perdue and Green, eds., *The Cherokee Removal*, 121; Reed, "Postremoval Factionalism in the Cherokee Nation," 150.

known as the Old Settlers, government. The Old Settlers harbored reservations about them, but did not regard them as criminals despite the Cherokee Blood Law the Ross faction swore they broke. In 1840, these two groups officially merged and joined to oppose the Eastern Cherokee. The more prosperous Ridge followers clashed often with the Ross followers, who remained hostile to them because they saw them as traitors and had suffered more in the Trail of Tears as they did not have the resources to remove themselves. The Treaty Party often retaliated with aggression and sent unfavorable reports to the area's Indian agent and nearby stationed US military, eventually complaining directly to officials in Washington, DC. This caused further intervention into Cherokee internal affairs and would eventually have a negative effect on the tribe's sovereignty.<sup>31</sup>

At Ross' suggestion, his followers and the Western Cherokees met on June 3, 1839, at Takatoka, four miles east of present day Tahlequah. John Brown, primary chief of the Old Settlers, proclaimed that the newcomers could choose any territory they liked, vote and run for any offices, and were subject to the Old Settlers' government and laws. He also told Ross that no further action was required on his part as one nation, that of the Old Settlers, already existed. Brown assumed the Eastern Cherokees were simply immigrants without a nation or government, and considered the Cherokee people united as he had taken them into his tribe.<sup>32</sup>

Ross replied that the Eastern Cherokees would not just submit to their existing government because then the minority (Old Settler) would rule the majority (Ross' followers). Ross instead called a meeting between chiefs and councils. On June 12, 1839, Ross suggested

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<sup>31</sup> Anderson, ed. *Cherokee Removal*, 113; Wilkins, *Cherokee Tragedy*, 316; Rogers, *Ani-Yun-Wiya*, 200; McLoughlin, *After the Trail of Tears*, 11, 28; Paul Johns, "The Ridge Family and the Cherokee Blood Law," *Christian County Headliner News*, August 28, 2011; The Cherokee Blood Law, October 24, 1829, *The Cherokee Observer*, <http://www.cherokeeobserver.org/Issues/bloodlaw.html> (accessed September 18, 2017).

<sup>32</sup> Wilkins, *Cherokee Tragedy*, 318-19; McLoughlin, *After the Trail of Tears*, 10; Rogers, *Ani-Yun-Wiya*, 201; Clark, *Cherokee Chief*, 82; Paul Johns, "The Ridge Family and the Cherokee Blood Law," *Christian County Headliner News*, August 28, 2011; Reed, "Postremoval Factionalism in the Cherokee Nation," 150-51.

each side appoint three men, who would together appoint three more men, to create a council of nine to draft a code of laws and decide a method of election for new national officers and a council. The Western Cherokees rejected this offer, perplexed because they believed the tribe already united under their existing rule.<sup>33</sup>

Ross had other reasons for refusing to simply merge with the Western Cherokees. He still denied the validity of the Treaty of New Echota, and hoped to renegotiate terms with the US. He feared if they joined Old Settlers, their politicians would control final negotiations regarding removal and accept the treaty's terms since they had already moved and did not suffer the death and hardships during the Trail of Tears. In addition, the payments due to the Eastern Cherokees from the US for removal would be under the control of the Western chiefs, which Ross believed to be the true reason the Old Settlers refused to negotiate with him. In addition, the same day that Brown had refused Ross' plan, the Treaty Party arrived at Takatoka to meet with the Old Settlers. Ross assumed they arrived to persuade the Western Cherokees out of making any concessions, interfering with unification.<sup>34</sup>

Ross replied to the Old Settlers' refusal to his idea by asking them to suggest a method for uniting their people. Brown proposed two separate nations. Ross refused because he knew, that like the situation with removal, the US would only negotiate with the faction that served its interests best. Ross believed that Brown realized this and it was ultimately what the Old Settlers wanted.<sup>35</sup>

On the other hand, Brown believed that because Ross refused his idea of a two government system, the Eastern Cherokees wanted to dissolve his nation and create a tribe controlled by Ross. Brown informed Ross that the Old Settlers suggested that all Cherokees meet

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<sup>33</sup> Rogers, *Any-Yun-Wiya*, 201; McLoughlin, *After the Trail of Tears*, 11-12.

<sup>34</sup> "Resolution of the National Council of the Eastern Cherokees, June 19, 1839." Folder 4, Box 5, John Ross Papers [GMP]; McLoughlin, *After the Trail of Tears*, 10-13; Wilkins, *Cherokee Tragedy*, 319.

<sup>35</sup> McLoughlin, *After the Trail of Tears*, 11-12.

at his nation's October council to revise the laws and possibly rewrite the constitution. The Old Settlers refused any further concessions and Ross declined a further meeting. Unification remained at a stalemate when Brown adjourned the Takatoka Council on June 20, 1839.<sup>36</sup>

When the general attendees of the council learned the Western Cherokeees refused to compromise regarding unification, many became angry. Jesse Bushyhead, a Ross follower, and Sequoyah, an Old Settler, gathered people and called for a People's Council. Tribes had utilized a "People's Council" as a traditional method to solve contested issues by popular consensus.<sup>37</sup> The organizers set a meeting for July 1, 1839, at Illinois Campground. The National Council of the Eastern Cherokeees agreed they would accept the solution devised by the People's Council. The Eastern Cherokeees would gain the most from a majority agreement since it constituted two thirds of the total population.<sup>38</sup>

After the failure of the Takatoka meeting, approximately 150 members of the Ross Party secretly met on June 21, 1839. They agreed to exact revenge on the signers of the Treaty of New Echota as they had broken the Cherokee blood law forbidding the sale of Cherokee land without permission from the National Council, punishable by death. This group that planned and participated in the assassinations did not see themselves as vigilantes, they believed they were carrying out the laws of their people. Without the knowledge of Ross, the assassins decided to act the next day, murdering Major Ridge, John Ridge, and Elias Boudinot. Allen Ross, the son of Ross, remained close to his father to ensure he knew nothing of the plot. John Ross had prevented

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<sup>36</sup> Letter from John Ross to General Arbuckle, August 7, 1839. Folder 1, Box 5, John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 201; Wilkins, *Cherokee Tragedy*, 320; McLoughlin, *After the Trail of Tears*, 12.

<sup>37</sup> Sequoyah was also known as George Guess. Reed, "Postremoval Factionalism in the Cherokee Nation," 151.

<sup>38</sup> Resolution of the Combined Council. Signed by Guess and Bushyhead. June 20, 1839. Folder 4, Box 5, John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 201; Reed, "Postremoval Factionalism in the Cherokee Nation," 151.

earlier assassination attempts as he feared violence would prevent further renegotiation of the removal treaty.<sup>39</sup>

After reviewing the Cherokee Blood Law, the revenge party drew straws at Double Head Springs to determine the actual executioners. They divided into four groups, with approximately twenty witnesses accompanying each to ensure the actual killers remained anonymous. Major Ridge, travelling in Arkansas, died from a gunshot while he stopped to water his horse. John Ridge, his son, was dragged from his bed at his home in Indian Territory and stabbed more than twenty times. Elias Boudinot, Major Ridges' nephew, died after an attack with a knife and hatchet. A witness to the attack sent a messenger to warn Boudinot's brother, Stand Watie, who escaped. After these deaths, the revenge groups abandoned their plan to murder the other eight on the list. The rest of the Treaty Party fled to safety or sought safety at Fort Gibson with US troops.<sup>40</sup>

Watie, the new leader of the Treaty Party, held John Ross responsible and promised further violence. He then gathered men to exact revenge on the chief. Several hundred people reacted quickly and surrounded Ross' home at Park Hill to protect him. Instead of fighting those protectors, the Treaty Party appealed to the US.<sup>41</sup>

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<sup>39</sup> Cherokee Constitution, 1827, New Echota, Document tl217, Tennessee Documentary History, 1796-1850, University of Tennessee Press Digital Library Database, University of Tennessee, Knoxville, Tennessee; McLoughlin, *After the Trail of Tears*, 15-16; Wilkins, *Cherokee Tragedy*, 321; Anderson, ed. *Cherokee Removal*, 113; Sturm, *Blood Politics*, 64; Paul Johns, "The Ridge Family and the Cherokee Blood Law," *Christian County Headliner News*, August 28, 2011; Cherokee Blood Law; Duane King, "Introduction," xvii.

<sup>40</sup> Letter from General Arbuckle to John Ross, 1839. Folder 1, Box 5, John Ross Papers [GMP]; Wilkins, *Cherokee Tragedy*, 321-22, McLoughlin, *After the Trail of Tears*, 16; Rogers, *Any-Yun-Wiya*, 201; Nicole Claro, *The Cherokee Indians* (New York: Chelsea House Publishers, 1992), 60; Sturm, *Blood Politics*, 64; Clark, *Cherokee Chief*, 82-83; Conley, *The Cherokee Nation*, 160; Paul Johns, "The Ridge Family and the Cherokee Blood Law," *Christian County Headliner News*, August 28, 2011; Reed, "Postremoval Factionalism in the Cherokee Nation," 151.

<sup>41</sup> Letter from General Arbuckle to John Ross, 1839. Folder 1, Box 5, John Ross Papers [GMP]; Wilkins, *Cherokee Tragedy*, 325; McLoughlin, *After the Trail of Tears*, 16-7; Claro, *The Cherokee Indians*, 60; Rogers, *Any-Yun-Wiya*, 202.

The same day, Ross reported the assassinations to General Matthew Arbuckle at Fort Gibson, also informing him of Watie's actions in gathering a mob and threatening to kill him. With the Treaty Party appealing for action from the US, citing chaos and violence in Indian Territory, the Commissioner of Indian Affairs put Arbuckle in charge of arresting and punishing the murderers. Arbuckle panicked and requested a brigade of volunteer troops from the governors of Arkansas and Missouri to protect him from an uprising of the Cherokees. The soldiers arrived to find no evidence of further violence and returned to their garrison at Fort Leavenworth.<sup>42</sup>

The US War Department ordered the arrest and trial of the assassins, further charging Arbuckle to apprehend them. Arbuckle, who never believed Ross' ignorance of the plot, compiled a list of suspects and threatened the use of military force if Ross did not turn them over. The military held Ross fully responsible for the deaths, even though the chief had reported the incident to them and asked for federal troops to prevent further bloodshed. Ross continued to deny any knowledge of the plans, only stating that the men had been carrying out tribal law and declared the matter resolved within the tribe.<sup>43</sup>

In September 1839, Arbuckle declared that Ross had failed to adequately punish the revenge party and that his troops would arrest all suspects. Recognizing the illegality of federal intervention in such tribal matters, Ross replied that the US could only arrest those over whom it had jurisdiction. All of the murders had occurred on tribal land (except that of Major Ridge in Arkansas), so the US had no authority to arrest and try Cherokee citizens. The chief publicly declared the threats of Arbuckle as falsehoods to harass Indians and blamed the difficulties on the

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<sup>42</sup> Letter from General Arbuckle to John Ross, 1839. Folder 1, Box 5, John Ross Papers [GMP]; Letter from Arbuckle to John Ross, June 23, 1839; Letter from General Arbuckle to John Ross, 1839. Folder 4, Box 5, John Ross Papers [GMP]; Wilkins, *Cherokee Tragedy*, 325; Rogers, *Ani-Yun-Wiya*, 201-07; McLoughlin, *After the Trail of Tears*, 17i.

<sup>43</sup> Letter from Arbuckle and Armstrong to Ross, September 28, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Sturm, *Blood Politics*, 64; McLoughlin, *After the Trail of Tears*, 17; Letter from Arbuckle and Armstrong to Ross, September 30, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 201, 204.

military. Eventually, Arbuckle abandoned his efforts to capture the revenge party. However, he continued to distrust Ross and their relations remained strained.<sup>44</sup>

In addition to causing illegal federal intervention from the general at Fort Gibson, the murders of the Treaty Party caused greater ramifications that would also hinder unification. This caused the negotiations that Ross hoped to resume with the US regarding the terms of removal to be delayed as well. The pre-existing tribal divisions that began in Georgia exploded and began one of the bloodiest eras in Cherokee history. Each faction retaliated with revenge killings on both sides until 1846. In 1842, Stand Watie killed one of the men who had murdered his uncle. In 1845, Watie's brother was killed by the Ross faction. During that year more than thirty killings occurred between the two factions.<sup>45</sup>

Arbuckle suggested Ross and the Old Settler chiefs meet at Fort Gibson on June 25, 1839, to prevent any further violence. Western chiefs Brown, Looney, and Rogers wrote Ross, urging him to attend the Fort Gibson meeting and cancel the People's Council on July 1. Arbuckle and Indian agent Montfort Stokes told Ross they supported the proposal of the Western Cherokees because the tribe could not function with two separate governments. Arbuckle also threatened Ross, warning that the Eastern Cherokees should accept the Old Settlers' terms or endure serious difficulties.<sup>46</sup>

Ross refused to attend the meeting at Fort Gibson because its organization deprived his faction any official standing. The meeting served only as an opportunity for them to agree to Old Settler rule, with the Eastern Cherokees only having the power to sue for concessions. Ross

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<sup>44</sup> Letter from Arbuckle and Armstrong to Ross, November 4, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Arbuckle and Armstrong to Ross, September 30, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Arbuckle and Armstrong to Ross, September 14, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Arbuckle and Armstrong to Ross, November 2, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 201, 204; Wilkins, *Cherokee Tragedy*, 327; McLoughlin, *After the Trail of Tears*, 16-17.

<sup>45</sup> Sturm, *Blood Politics*, 64; McLoughlin, *After the Trail of Tears*, 16-17; Paul Johns, "The Ridge Family and the Cherokee Blood Law," *Christian County Headliner News*, August 28, 2011.

<sup>46</sup> Rogers, *Ani-Yun-Wiya*, 202; McLoughlin, *After the Trail of Tears*, 18.

argued that the government should go with the will of the people, stating the People's Council, as a tradition, retained more validity because even members of the Old Settlers could attend and participate. He refused to cancel the council, hoping to achieve unity through it before the US could intervene.<sup>47</sup>

The People's Council met on July 1, 1839, at Illinois Camp Ground near Tahlequah, about a mile and a half from Park Hill. Approximately 2,000 people attended, including many Old Settlers. Attendance remained lower than expected, most likely from people fearing further violence. Old Settler chiefs did not attend because the Ross majority could outvote them and they discouraged their followers from attending. On July 5, Sequoyah wrote the Old Settler chiefs at Fort Gibson, inviting them to attend. Brown and Rogers adamantly declined but Looney agreed and joined the gathering.<sup>48</sup>

The council elected Sequoyah and George Lowrey (an Eastern Cherokee) as presiding officers. Next, it formed a "steering committee" of about twenty people, which included John Ross. The leaders first tackled the issue of violence and the executions of the Ridges and Boudinot. The council granted a full pardon to every person accused of murder since the arrival of the Eastern Cherokees to prevent any further violence from either side. However, the council summoned the Treaty Party members to appear within the next eight days and apologize or they would be exiled as outlaws. After their public apologies they would remain ineligible for any tribal office for five years and could only run afterwards if they Cherokee Nation approved. Seven of the Treaty Party came forward, but the rest refused. Watie declared he would rather die than accept such humiliating terms.<sup>49</sup>

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<sup>47</sup> McLoughlin, *After the Trail of Tears*, 17-18; Rogers, *Ani-Yun-Wiya*, 202.

<sup>48</sup> Letter from Arbuckle and Armstrong to Ross, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Wilkins, *Cherokee Tragedy*, 325-26; Rogers, *Ani-Yun-Wiya*, 202; McLoughlin, *After the Trail of Tears*, 17-18.

<sup>49</sup> Letter from Arbuckle and Armstrong to Ross, July 14, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Amnesty Decree, July 10, 1839. Folder 1, Box 5. John Ross Papers [GMP]; "National Convention, July 12, 1839." Folder 4, Box 5. John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 203; McLoughlin, *After the Trail*



In its most important achievement, the People's council created the Act of Union on July 12, 1839. With signatures from Sequoyah and Looney representing the Old Settlers and Ross for the Eastern Cherokees, the Act formed the two groups into a single Cherokee nation. The act called for the creation of a government suitable to the tribe's situation, providing full rights for all citizens. The council disbanded in late August 1839 while a committee drafted a new constitution for the entire tribe.<sup>50</sup>

On July 19, 1839, Ross wrote to Arbuckle and Stokes to report the Act of Union united all the Cherokee people. Arbuckle immediately declared the act void because even though some Western Cherokees signed, they lacked the authority to do so as they were not the chiefs. This proved ironic considering the Eastern Cherokees were removed by a treaty signed by those without tribal authority. This action portrays the inconsistency of US negotiating and dealing with tribes as they chose and whichever position best benefitted it. Arbuckle argued that the act would remain invalid until all Old Settlers agreed. Chief Looney had signed, but he had no right to depose Brown and Rogers. US Secretary of War Joel Poinsett believed the new government illegally seized power from the Western Cherokees. Ross argued its validity because people from both sides were invited to participate, and those who did had signed. The act granted both factions equal rights and participation in government. Arbuckle also stated that in declaring members of the Treaty Party outlaws, the council deprived them of rights. He viewed this as the council approving of the murders and began to threaten to arrest Ross as an accessory to the

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*of Tears*, 18-9; Anderson, ed. *Cherokee Removal*, 113; Claro, *The Cherokee Indians*, 60; Wilkins, *Cherokee Tragedy*, 326; Conley, ed. *The Cherokee Nation*, 160.

<sup>50</sup> Act of Union, July 12, 1839. Folder 1, Box 5. John Ross Papers [GMP]; Ross to National Council, September 23, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Ross to Arbuckle, September 5, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 202-3; McLoughlin, *After the Trail of Tears*, 19-20; Wilkins, *Cherokee Tragedy*, 326.

assassinations. Arbuckle declared no union had occurred and continued to acknowledge Brown as the chief of all Cherokees.<sup>51</sup>

Concurrently with the People's Council, the Old Settlers held their own meeting at Tahlontusky on July 22, 1839. Brown and Rogers presided over the event, with Looney away attending the People's Council. Watie and his followers attended to show their support. They invited Ross, who declined to leave the People's Council but he did send a delegation, which left quickly after encountering hostility from Treaty Party members.<sup>52</sup>

Brown and Rogers attempted to revive Ross' original proposal of a government that consisted of representatives from each faction. The chiefs decided that no Old Settler who cooperated with the Ross Party could serve in their government. Many of the attendees rejected the plan. Next, the Western Cherokees adopted a resolution to expel all whites from their territory sympathetic to Ross and increase the amount of their police to enforce their laws. They adjourned to meet again in October for elections. The Western Cherokees elected John Rogers as their principal chief and deposed Looney because he participated in the People's Council.

With the People's Council and Old Settlers' meetings still in session, on August 20, 1839, the Treaty Party called its own meeting at Price's Prairie. Angered by their classification as outlaws, the Treaty Party refused to support the Act of Union, which they called the "mobocracy of John Ross."<sup>53</sup> They maintained that the murders of their leaders deserved punishment and agreed to appeal to the US for an investigation and punishment. Those at the meeting voted for

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<sup>51</sup> Letter from Arbuckle to Ross, September 14, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Arbuckle to Ross, September 28, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Ross to Arbuckle, September 30, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Rogers, *Ani-Yun-Wiya*, 204; McLoughlin, *After the Trail of Tears*, 20, 23; Reed, "Postremoval Factionalism in the Cherokee Nation," 153.

<sup>52</sup> Letter from Ross to Arbuckle, September 14, 1839. Folder 1, Box 5. John Ross Papers [GMP]; McLoughlin, *After the Trail of Tears*, 23; Rogers, *Ani-Yun-Wiya*, 203; Reed, "Postremoval Factionalism in the Cherokee Nation," 153.

<sup>53</sup> McLoughlin, *After the Trail of Tears*, 20; Rogers, *Ani-Yun-Wiya*, 203.

John A. Bell and Stand Watie to lead a delegation to the meet with Secretary of War Poinsett to prevent Ross' rule.<sup>54</sup>

In a letter to Poinsett, Waite and his followers reported they feared for their lives and acknowledged their refusal to submit to what they considered Ross' tyranny. The requested protection and negotiation with their delegates. Upon arrival in Washington, DC, President Van Buren and Poinsett sided with the Treaty Party nearly instantly. Poinsett agreed to order troops from Fort Gibson to arrest the assassins and to protect Watie's faction.<sup>55</sup>

The meeting at Price's Prairie proved a disastrous setback for Cherokee sovereignty. In requesting federal protection, the Treaty Party invited illegal US intervention in internal tribal affairs, which the US would use to their advantage later. While Watie and his followers eventually grudgingly admitted the People's Council government served as the tribe's political body, they had proved willing to sacrifice their people's autonomy for factionalism. Without their letters and meeting with the officials in Washington, DC, the US would not have had military troops intervene and impose their will.<sup>56</sup>

The Old Settlers held another meeting on November 10, 1839, to refute the People's Council government, which they considered Ross' seizure of the tribal government. Rogers, who held a personal hatred for the eastern chief, knew many Western Cherokees thought favorably of the People's Council's proposal. He sought to strengthen his faction by establishing a closer alliance with the Treaty Party. In joining with Watie, Rogers also accepted the War Department interfering in Cherokee affairs, an action few of the people wanted.<sup>57</sup>

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<sup>54</sup> Statement by Joel Poinsett, 1839. Folder 4, Box 5. John Ross Papers [GMP]; McLoughlin, *After the Trail of Tears*, 20; Wilkins, *Cherokee Tragedy*, 327.

<sup>55</sup> McLoughlin, *After the Trail of Tears*, 20; Rogers, *Ani-Yun-Wiya*, 203; Wilkins, *Cherokee Tragedy*, 326.

<sup>56</sup> Wilkins, *Cherokee Tragedy*, 327.

<sup>57</sup> McLoughlin, *After the Trail of Tears*, 23-4.

The factionalism became further complicated when a split occurred within the Western Cherokees. Sequoyah, Looney, and other leaders urged their followers to support reunion under the proposal of the People's Council. About two hundred Old Settlers agreed to accept the Act of Union. In addition, they voted to depose Brown and Rogers for siding with the Treaty Party and refusing unification on anything but their own terms. Rogers, John Smith, and a man called Dutch led those Western Cherokees who still opposed reunion. However, with violence increasing, Rogers fled to Mexico with his family.<sup>58</sup>

The People's Council reconvened at Tahlequah, its new capital, on September 6, 1839. Led by Ross' nephew, the constitutional committee presented its draft, closely modeled on that of the Eastern Cherokees from 1827. The council adopted the new constitution. It differed from the Eastern Cherokees' as it changed the elections of the principal and second principal chiefs to popular vote. The council and attendees elected officials, with Ross chosen as principal chief, and began other national business, such as developing foreign policy with other Indian nations. Under the new election system, the Old Settlers received at least one-third of posts. Some won offices, such as Dutch, but quickly resigned because they refused to recognize the new government.<sup>59</sup>

Soon after elections, the council voted to send Ross and a delegation to Washington, DC, to request a renegotiation of the Treaty of New Echota with better terms, as well as explain the justification for the Treaty Party killings. Once they arrived in the capital, Poinsett refused to meet with the delegation because he had heard rumors of Ross' involvement in the assassinations. Eventually, Poinsett agreed to meet the delegation without the chief. However, Poinsett stated he

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<sup>58</sup> Wilkins, *Cherokee Tragedy*, 327; McLoughlin, *After the Trail of Tears*, 20-3.

<sup>59</sup> Cherokee Nation. *The Constitution and Laws of the Cherokee Nation. Passed at Tah-Le-Quah, Cherokee Nation, 1839* (Wilmington, MD: Scholarly Resources Incorporated, 1975); Ross' Address to the National Council, September 12, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Conley, *The Cherokee Nation*, 161; Rogers, *Ani-Yun-Wiya*, 203-04, 208; McLoughlin, *After the Trail of Tears*, 21; Sturm, *Blood Politics*, 65.

did not recognize the Ross followers as the legitimate government of the Cherokees. Ross sent a petition to Congress in February 1840, but it did not accomplish anything.<sup>60</sup>

At the same time as the meeting with Ross' delegation, groups from both the Western Cherokees and the Treaty Party arrived to meet with Poinsett. They both informed the Secretary of War that they believed only a political and geographical division of the tribe would end difficulties. From November 1839 to the spring of 1841, all three factions repeatedly sent delegations to the US capital to negotiate for their political power. Although US officials supported the Western Cherokee government, they took no action. Ross continued to send several petitions and memorials. The People's government received few concessions, except gaining some of the withheld payments for removal.<sup>61</sup>

While the leaders held meetings in Washington, DC, chaos and civil war erupted within the Cherokee Nation. The issue of fully uniting all factions, as well as revenge for removal and the murder of the Treaty Party, led to seven years of internal guerilla warfare. The tribe had to postpone renegotiation with the US as it remained impossible in a nation where survival became the priority of most leaders. Killings occurred on both sides, with many people fleeing to Arkansas. The Cherokees argued among themselves whether the violence occurred because of the original betrayal of the Treaty Party or the murders of the Ridges and Boudinot. Assassinations remained common, with murders occurring almost weekly. Lawlessness abounded with arson, robbery, and gang crime. The fighting also destroyed agriculture and livestock, causing further death from disease and malnutrition. The anti-Ross factions furthered war within the nation in

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<sup>60</sup> Ross Delegation to Poinsett, December 31, 1839. Folder 5, Box 5. John Ross Papers [GMP]; Letter from Ross to Poinsett, January 1, 1840. Folder 6, Box 5. John Ross Papers [GMP]; McLoughlin, *After the Trail of Tears*, 27; Rogers, *Ani-Yun-Wiya*, 204-05.

<sup>61</sup> Letter from William Armstrong to Ross, September 9, 1839. Folder 4, Box 5. John Ross Papers [GMP]; McLoughlin, *After the Trail of Tears*, 27-28; Rogers, *Ani-Yun-Wiya*, 206.

order to get the intervention of the US military, which hopefully would depose Ross. The majority of citizens supported Ross, who won several re-elections as principal chief.<sup>62</sup>

Congress received word of the continuing violence and the House Committee on Indian Affairs conducted an investigation. Ross learned of the committee and submitted a memorial on April 20, 1840. The committee found that the War Department instigated and worsened the conflict and unrest in Indian Territory. The House refused to permit filing of the report because it negatively portrayed US officials. A member of the committee, John Bell, gave a copy to the press on July 27, 1840, which published it as "Bell's Suppressed Report."<sup>63</sup>

Bell's report showed the US government had broken the removal treaty by withholding the \$800,000 due to the Eastern Cherokee in hopes it would force them to dissolve their government of the majority and join the more agreeable Old Settlers. The US had no legal right to choose the Western Cherokee government as the legitimate governing body for all Cherokees. The report criticized Secretary Poinsett in aiding minority rule and censured the War Department for unnecessary involvement in internal tribal affairs. Although no direct gains resulted from the report, it acknowledged unlawful interference in Cherokee politics.<sup>64</sup>

After seven years of internal warfare, the US fully intervened. Commissioner of Indian Affairs William Medill met with all three factions. He advised President Polk no compromise would reconcile the three parties and advised the division of the tribe into two separate nations. Arbuckle, now Indian agent to the tribe, also supported Medill's proposal. This obviously hindered the Cherokees' sovereignty and negotiation abilities with the US. Polk accepted Medill's

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<sup>62</sup> Letter from Arbuckle and Stokes to Ross, June 29, 1839. Folder 4, Box 5. John Ross Papers[GMP]; Anderson, ed. *Cherokee Removal*, 113; Sturm, *Blood Politics*, 64-5; McLoughlin, *After the Trail of Tears*, xiii, 5, 33-4; Claro, *The Cherokee Indians*, 61; Wilkins, *Cherokee Tragedy*, 326; Rogers, *Ani-Yun-Wiya*, 221; Clark, *Cherokee Chief*, 85; Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln, NE: University of Nebraska Press, 2004), 49, 61-2; Reed, "Postremoval Factionalism in the Cherokee Nation," 158.

<sup>63</sup> Rogers, *Ani-Yun-Wiya*, 207; McLoughlin, *After the Trail of Tears*, 28.

<sup>64</sup> McLoughlin, *After the Trail of Tears*, 28.

advice and asked Congress to create a bill breaking the Cherokees into two on April 13, 1846. On June 2, the House Committee on Indian Affairs reported it supported the president's recommendation and introduced a bill.<sup>65</sup>

To prevent division and losing everything he had worked for in the past seven years, Ross offered again to negotiate an agreement with the other two factions. Before Polk would agree to rescind his bill, Ross had to not only create a consensus with all parties involved but also acquiesce to several concessions by a committee appointed by the president. In another assault on autonomy, the federal government met with the Cherokees and began negotiating a "compulsory agreement" in the summer of 1846. If the Cherokees had been able to unify rather than resorting to violent factionalism, the federal government would not have been able to force additional concessions favorable to the US.<sup>66</sup>

Signed in August, the Treaty of 1846 united the Cherokees into a single nation with sacrifices made from all factions. Ross was forced to accept the Treaty of New Echota but the treaty enacted the Act of Union, the previously written constitution, and a patent to their seven million acres in Indian Territory. The Western Cherokees yielded their autonomy by conceding to Ross' leadership but gained a portion of the removal funds. The treaty granted amnesty to all past crimes and provided a settlement for the heirs of the Ridges and Boudinot. The US once again recognized Ross as the Principal Chief of the Cherokee. After the signing of the treaty, Ross and Watie shook hands to symbolize reconciliation and unity.<sup>67</sup>

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<sup>65</sup> McLoughlin, *After the Trail of Tears*, 49, 54-6; Wilkins, *Cherokee Tragedy*, 326, Denson, *Demanding the Cherokee Nation*, 49; Anderson, ed. *Cherokee Removal*, 114; Reed, "Postremoval Factionalism in the Cherokee Nation," 154-55.

<sup>66</sup> Treaty with the Cherokees, 1846 [Kappler]; Denson, *Demanding the Cherokee Nation*, 49; McLoughlin, *After the Trail of Tears*, 56-7; Wilkins, *Cherokee Tragedy*, 327-28; Conley, *The Cherokee Nation*, 163.

<sup>67</sup> Treaty with the Cherokees, 1846 [Kappler]; Denson, *Demanding the Cherokee Nation*, 49; McLoughlin, *After the Trail of Tears*, 55-9; Sturm, *Blood Politics*, 66-7; Rogers, *Ani-Yun-Wiya*, 220-22; Clark, *Cherokee Chief*, 87; Claro, *The Cherokee Indians*, 61; Anderson, ed. *Cherokee Removal*, 114; Conley, *The Cherokee Nation*, 164-65; Reed, "Postremoval Factionalism in the Cherokee Nation," 155. The Treaty of 1846

With a unified government, the Cherokees were able to focus on rebuilding their nation in Indian territory and fostering economic prosperity. In the period from 1846-60 the Cherokees utilized their political autonomy to focus on rebuilding their nation in Indian Territory and instilling economic prosperity. The Treaty of 1846 recognized their status as a sovereign nation but existed as such only with the interference and permission of the US. This furthered the precedence that the federal government maintained the right to divide or dissolve the tribe if it chose. The Cherokees soon adopted different strategies in the effort to secure their status as autonomous and maintain control over their internal affairs.

In efforts to convince the US of the importance of Cherokee sovereignty, the tribe wrote often to Congress to describe their "advanced civilization." They stated if their political status was curbed then their progress as a people would suffer as well. The tribe called themselves the "eldest brothers" of all Indians and as missionaries to the others who could serve as an example of the benefits of advancing civilization. The Cherokees also asserted that after the suffering of the Trail of Tears, the US owed them political autonomy. They mostly focused on the strategy of magnifying their progress toward civilization until the American Civil War.<sup>68</sup>

The Cherokees had once again achieved a thriving republic by the 1850s. The tribe kept a delegation in Washington, DC, permanently to remain current on any relevant issues. The tribe studied other politicians, developing important lobbying tactics and important personal relations. They hired lawyers, addressed US officials, reestablished a newspaper in 1844, *The Cherokee Advocate*, and solicited support from white reformers known as the "friends of the Indians."

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marked the occasion when an agreement with the US, an uninvolved party, was required to achieve peace in the nation.

<sup>68</sup> Denson, *Demanding the Cherokee Nation*, 45-6; McLoughlin, *After the Trail of Tears*, xiii, 58.



Known as the "Golden Age of the Cherokee," the period from 1849-60 featured a rise in autonomy, infrastructure, and economics.<sup>69</sup>

The American sectional crisis regarding slavery and the dissolution of the Union shattered the decade of prosperity and autonomy of the Cherokees, despite their initial proclamation of noninvolvement. When civil war erupted in 1861, the tribe once again divided, along similar lines as before. The faction leaders from the removal crisis remained in charge. The same generation had the shared experiences of deaths caused by the Trail of Tears, losing their homelands, and bitter, violent feuding. Also, as before, internal fighting cost the tribe further rights to self governance as the US would capitalize on the instability.<sup>70</sup>

When the war began, Ross sought to remain neutral and issued a proclamation refusing any role in the American war. Most Cherokee supported the Union. However, the North made no effort to keep an alliance with Native Americans. Socially, the tribe had more connections with the South. Indian agents usually came from southern states and with the creation of the Confederacy, the entire federal bureaucracy in the Indian Territory resigned and joined the conflict. Socially, the Cherokees lived similarly to southerners, many living on plantations and owning slaves (such as Watie and Ross).<sup>71</sup>

Despite the declaration of neutrality, the old factions within the tribe chose opposing sides. The Treaty Party, which consisted mostly of wealthy slave owners, supported the South. Watie ignored Ross' proclamation and publicly announced he and his followers supported secession and planned to side with the Confederacy. Now known as the Southern Party or Watie Party, the proslavery minority still resented the persecution by Ross' followers and some saw the

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<sup>69</sup> Denson, *Demanding the Cherokee Nation*, 15; Claro, *The Cherokee Indians*, 61; Anderson, ed. *Cherokee Removal*, 114-5; Reed, "Postremoval Factionalism in the Cherokee Nation," 160.

<sup>70</sup> Anderson, ed. *Cherokee Removal*, 116; Denson, *Demanding the Cherokee Nation*, 56.

<sup>71</sup> Anderson, ed. *Cherokee Removal*, 116; Clark, *Cherokee Chief*, 100; Reed, "Postremoval Factionalism in the Cherokee Nation," 160-61.

war more as an opportunity to depose the Ross regime rather than any strong loyalty to the Confederacy.<sup>72</sup>

The Watie Party, sent a delegation to negotiate an alliance by treaty without any authority from the Cherokee government. In July 1861, General Ben McCullough made Watie a colonel and issued guns and supplies to a newly created company of Watie's three hundred followers.<sup>73</sup>

After the Southern Party aligned with the Confederacy, neutrality of the tribe in the American Civil War began to waiver. The Cherokee Nation began to divide between supporters of the North and the South. Ross feared his rivals would use their Southern alliance to seize control of the tribal government resulting in internal violence. To prevent this, Ross called a general council, open to all citizens, in August 1861. The chief proclaimed he believed it necessary to form an alliances with the Confederacy to keep the tribe unified and from fighting one another. Several months later, the Cherokees signed a treaty applicable to the entire tribe with the South. Ross and his followers created their own Southern regiment for battle to prevent a Waite coup d'état.<sup>74</sup>

Despite Ross' actions, the tribe remained split between Northern and Southern supporters, which paralleled the same lines as the factional divisions prior to removal. Watie's soldiers formed the Knights of the Golden Circle, also known as the Southern Rights Party. Led by Reverend Evan Jones, Ross' pro-Union soldiers became the Keetoowahs, or the Pin Indians, who supported living according to traditional Indian culture. Many later became abolitionists.

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<sup>72</sup> Reed, "Postremoval Factionalism in the Cherokee Nation," 160.

<sup>73</sup> Denson, *Demanding the Cherokee Nation*, 58; Anderson, ed. *Cherokee Removal*, 116; Edward Everett Dale, "The Cherokees in the Confederacy," *The Journal of Southern History* 13 (May 1947): 159-853; Reed, "Postremoval Factionalism in the Cherokee Nation," 160.

<sup>74</sup> Treaty with the Cherokees, 1861. October 7, 1861 [Kappler]; Denson, *Demanding the Cherokee Nation*, 59; James Anderson Slover, *Minister to the Cherokees: A Civil War Autobiography* (Lincoln, NE: University of Nebraska Press, 2001), ix; Wilkins, *Cherokee Tragedy*, 328-9; Clark, *Cherokee Chief*, 100; Conley, *The Cherokee Nation*, 175; McLoughlin, *After the Trail of Tears*, 120, 125, 168.

The American Civil War did not mark the first use of the term Keetoowah. The Keetoowah were founded in 1858 "when it became evident that the white men was invading the home of the Cherokees and by inter-marriage was gradually threatening to absorb the fullblood element."<sup>75</sup> They stated "the term Keetoowah [was] the original word for Cherokee and the members of this society claim to represent the original Cherokee nation."<sup>76</sup> In addition, several of those who emigrated with the Old Settlers to the west in the early-nineteenth century referred to themselves as Keetoowah.

With the split in factions, the Cherokees began fighting each other, just as Ross had predicted. Ten thousand Union troops entered Indian Territory from Kansas and defeated the Cherokee soldiers who fought for the South. At this time, many Ross supporters deserted and joined the North, forming a federal regiment. In the meantime, Watie's men fled further south. Once several of his people defected to the North, Ross changed course and formally, the Cherokee tribe supported the Union.. Federal troops arrested Ross (much to his relief at seventy years old) at his home in Park Hill and transported him to Northern controlled territory in Kansas. The chief received a parole and spent the remainder of the war in the east, lobbying for the tribe in the US capital.<sup>77</sup>

After Ross' arrest, civil war within the tribe erupted once again between his supporters and Watie, similar to that of the 1840s. The Confederate Cherokees occupied Tahlequah and declared a new tribal government. Watie served as chief and his followers constituted the National Council. The Northern Cherokees returned a few months later and argued their

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<sup>75</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping Folder 127, Box 2, William Charles Rogers Collection, Western History Collections, Monnet Hall, University of Oklahoma, Norman, Oklahoma [Western History Collection hereafter cited as WHC].

<sup>76</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping Folder 127, Box 2, William Charles Rogers Collection [WHC]; "After Judge Gill: The Keetoowah Society Denies Making Trouble in the Cherokee Nation," *The Vinita Daily Chieftain* (Vinita, Indian Territory), June 16, 1903 [NWS OHS].

<sup>77</sup> Anderson, ed. *Cherokee Removal*, 116; Clark, *Cherokee Chief*, 98, 107-11; Denson, *Demanding the Cherokee Nation*, 60-1; Conley, *The Cherokee Nation*, 176.

government had never ceased to exist and that Ross still held the office of chief. Violence and raids occurred rampantly throughout the territory, creating a situation that surpassed the guerilla warfare of the 1840s.<sup>78</sup>

Robert E. Lee surrendered, ending the Confederacy, on April 9, 1865. Watie did not capitulate until June 23, the last Southern general to do so. At this time, the Cherokee Nation lay in ruins, burned and desolate from all the fighting. In addition, the postwar Reconstruction era treaties would serve as an even further erosion of tribal sovereignty and once again factionalism had divided the Cherokees. The US capitalized with postwar treaties to gain a large portion of property belonging to the tribe as part of their removal concessions. The treaty also reduced political rights and the autonomy of the indigenous.<sup>79</sup>

To decide the tribe's postwar fate and punishment, five US commissioners met at Fort Gibson in September 1865 to negotiate treaties with the Five Tribes. Dennis Cooley, chairman of the commissioners, officially deposed Ross as principal chief. Ross fought to maintain the rights granted by earlier treaties but the division between the factions cost the tribe any united front to protest effectively. In the spring and summer of 1866, the Watie and Ross groups sent separate delegations to jockey for federal recognition.<sup>80</sup>

The resulting Treaty of 1866 ordered the Cherokee to abolish slavery and accept freedmen as full citizens. The tribe had to sell a portion of their land along the Kansas border and allow the future sale of the Cherokee Outlet for the resettlement of other tribes being removed to Indian Territory. The US established a new district court within the tribal nation for all cases involving American and Indian citizens. With this stipulation, the tribe lost further jurisdiction in

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<sup>78</sup> Denson, *Demanding the Cherokee Nation*, 54; Conley, *The Cherokee Nation*, 177; Anderson, ed. *Cherokee Removal*, 116.

<sup>79</sup> Treaty with the Cherokees, 1861. October 7, 1861 [Kappler]; Treaty with the Cherokees, 1866 [Kappler]; Conley, *The Cherokee Nation*, 177; Anderson, ed. *Cherokee Removal*, 116.

<sup>80</sup> Treaty with the Cherokees, 1861. October 7, 1861 [Kappler]; Denson, *Demanding the Cherokee Nation*, 62; Wilkins, *Cherokee Tragedy*, 329; Anderson, ed. *Cherokee Removal*, 117; Treaty with the Cherokees, 1866. July 19, 1866 [Kappler].

their own nation. Furthering eroding autonomy, the Cherokees were forced to help create a general council for Indian Territory as a multi-tribal legislature. This new body served as a step towards bringing the territory completely under US law, rather than allowing the tribes to handle their own affairs. Lastly, the US declared the right to establish one or more military posts within the nation, giving it the ability to maintain troops within tribal lands. Confederate states were to free their slaves but did not have the requirement of granting them full rights of citizenship, losing land, or relinquish the ability to try and prosecute crimes within their borders.<sup>81</sup>

More than four thousand Cherokees died in the war, leaving thousands of widows and orphans in poverty and facing starvation. The Cherokee, rife with factions, once again had to reunify their nation, with land, property, and livestock destroyed, and the territory in ruins. Unlike their unification after removal, the tribe now also had to contend with railroad rights of way (another concession in the Treaty of 1866), a white territorial government, and the increasing intervention of US courts in Indian Territory. In August 1866, Chief Ross died, leaving Lewis Downing in charge of rebuilding a nation and continuing the struggle for sovereignty during what would later become known as the allotment period. Fortunately, factional violence ended with the war. Stand Watie, John Ross, and other leaders of conflicts from the 1830s-40s died soon after and the younger leaders did not hold the same resentments from the previous period.<sup>82</sup>

After Ross' death, a power vacuum occurred as a struggle for control occurred between the Traditionals who supported Ross and the Progressives who followed Watie. Downing, who did not speak English, served as second principal chief and applied to finish Ross' term. The

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<sup>81</sup> Treaty with the Cherokees, 1861. October 7, 1861. In *Indian Affairs: Laws and Treaties, Vol. II Treaties*, edited by Charles J. Kappler. Washington, DC: Government Printing Office, 1904; Treaty with the Cherokees, 1866. July 19, 1866. In *Indian Affairs: Laws and Treaties, Vol. II Treaties*, edited by Charles J. Kappler. Washington, DC: Government Printing Office, 1904; Conley, *The Cherokee Nation*, 180-1; Denson, *Demanding the Cherokee Nation*, 83-4; Claro, *The Cherokee Indians*, 64; Toney, "Divided We Fall," 77.

<sup>82</sup> Wilkins, *Cherokee Tragedy*, 329; Conley, *The Cherokee Nation*, 183; Anderson, ed. *Cherokee Removal*, 117; Denson, *Demanding the Cherokee Nation*, 53, 62; Toney, "Divided We Fall," 77; Reed, "Postremoval Factionalism in the Cherokee Nation," in *The Cherokee Indian Nation*, 161.

National Council met in August 1866 and instead of confirming Downing as chief chose William P. Ross, the nephew of the late chief, to finish the term. Although determined to continue his uncle's policies, the Traditionals resented Ross, who lived an assimilated, wealthy lifestyle similar to that of the Progressives. Actually, neither faction fully supported the appointment, as the Traditionalists believed they had lost power and the Watie Party faced resentment from the new chief.<sup>83</sup>

Ross led the nation through the complicated Reconstruction era. The tribal government faced difficulties as a result of rebuilding their nation after the devastation of a war and the harsh terms of the Treaty of 1866, further external pressure resulted from US demands to sell the Cherokee Outlet, rights of way through the territory by the railroad companies, and a growing number of illegal white squatters. The Southern Party continued to send delegations separate from the official tribal government to Washington, DC. They opposed the Traditionalists and agitated for separate monetary settlements and political power. Lacking his uncle's charisma and effectiveness, William Ross stubbornly excluded Watie and his followers from any political decision making. However, the majority of the citizens remained alienated from the political process and instead focused on the daily struggle to rebuild their homes and lives. As a result, this prevented further factionalism as most were weary of fighting.<sup>84</sup>

With the supposed closing of the frontier at the end of the nineteenth century and white settlers clamoring for land, the US government searched for a solution that would create homesteads and eliminate the "Indian problem." Concurrently, social reformers in the east and self-proclaimed "friends of the Indian" believed assimilation into Anglo society remained the key to improving American Indian life. In 1887, Congress passed the General Allotment Act, which would divide tribal land of all except the Five Tribes. In 1893 the US created the Dawes

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<sup>83</sup> McLoughlin, *After the Trail of Tears*, 228-30.

<sup>84</sup> Conley, *The Cherokee Nation*, 183-5; McLoughlin, *After the Trail of Tears*, 228-46.

Commission to apply the policy to those initially exempted, ending the traditional practice of communal land ownership. In addition to changing the method of land holding, the allotment policy also included the Curtis Act of 1898, ending tribal governments and sovereignty.<sup>85</sup>

During the tribal election in August 1867, several people sought to create a compromise government between the two factions. In this process, political parties formed rather than warring factions. An adopted Cherokee citizen, John B. Jones established the Downing Party in opposition to Ross. Since he had made the first effort in communicating amicably with the Watie Party, who agreed to support him, Downing seemed the best candidate for achieving a compromise. Supported by several from both the Watie and Traditional factions, Downing won the 1867 election and took office in November. Appointing several government officials from the various factions, the Downing Party began the move towards national reconciliation.<sup>86</sup>

While this new generation of leaders proved more willing to cooperate than their predecessors, they grew up with the violence between the factions and resentments between leaders still existed. However, even with these bitter memories, this era of cooperation and collaboration fostered a prosperous golden era of the Cherokee republic. This period shows the positive results of working together, often only possible after a new generation of leaders with different shared experiences of those previous take charge. Within the time period of this work, this era of cooperation is rivaled only by the collaboration of various factions in the 1920s. However, the progress of the leaders in the 1870s-1880s was shortened by unfavorable US Indian policies of assimilation. In contrast, the leaders of the 1920s were able to take advantage of the favorable federal Indian policies of the 1930s.

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<sup>85</sup> Conley, *The Cherokee Nation*, 183-5; McLoughlin, *After the Trail of Tears*, 228-46.

<sup>86</sup> Downing was reelected in 1871. McLoughlin, *After the Trail of Tears*, 246-7; Denson, *Demanding the Cherokee Nation*, 179.

Downing, reelected in 1871, exercised impressive political skill to keep the factions working together in a coalition government. By the 1870s, the nation had mostly overcome the bitter factionalism fighting of the past. However, as internal issues lessened, external forces pressures mounted. Before the American Civil War, the Cherokees had to deal with greedy homesteaders, cattle ranchers, and railroad companies vying for their land. Now, in addition to these continued issues, the loss of treaty negotiations, jurisdictional loss in criminal prosecution, and allotment all proved even more challenging.<sup>87</sup>

With the adoption of the assimilation policy through allotment, the relations between the US and tribes changed. In 1870, Congress abolished the treaty process, by which the Cherokees had long based their argument for the right to self-determination. US legislators stated that while the Supreme Court defined the tribes as "domestic, dependent nations," Congress retained plenary power to protect its wards regardless of treaties. In other words, Congress ranked its ideas of paternalism and responsibility towards the Indians above their self government, suggesting the US did not believe the tribes capable of taking care of themselves.<sup>88</sup>

In 1870, the *Cherokee Tobacco Case* affected all natives and redefined their place within the US by raising the question of the power of Congress to supersede treaty stipulations. Tribal lawyers used the case to argue that the Treaty of 1866 exempted Indians from excise taxes and that treaties remained the supreme law of the land. Congress had previously abolished the treaty process but did not invalidate the previous agreements. In January 1871, during the trial,

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<sup>87</sup> McLoughlin, *After the Trail of Tears*, 225-6.

<sup>88</sup> Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914* (Orem: Ancestry.com Incorporated, 1999), 7, 12; Orville H. Platt, "Problems in the Indian Territory," *The North American Review* 160 (February 1895), 195; William T. Hagan, *Taking Indian Lands: The Jerome (Cherokee) Commission, 1889-1893* (Norman, OK: University of Oklahoma Press, 2003), 17; *Cherokee Nation v. Georgia*, 30 US 1 (US Supreme Court, 1831).



Congress declared that "No Indian nation or tribe...shall be recognized as an independent nation, tribe, or power with whom the U.S. may contract by treaty."<sup>89</sup>

On May 1, 1871, the judges ruled that "An act of Congress may supersede a prior treaty."<sup>90</sup> The trial proved a major loss for all Indian nations as it abolished treaty rights and Congress maintained that it could legislate whatever it deemed best. After the decision, many Cherokees believed Congress could take away land held in common and begin pushing for private ownership of land, which would erode cultural traditions and mean the end of tribal government. Some Americans interpreted the ruling as defining Indian Territory as within the boundaries of the US. As a result, even more white settlers flooded into the area, exacerbating the intruder and jurisdiction issues.<sup>91</sup>

In regards to jurisdiction, the federal government further edged out tribal governments by applying its criminal jurisdiction over Indian Territory. After the Civil War, the Western District of Arkansas court moved from Van Buren to Fort Smith and gained authority over all crimes committed in Indian Territory except those between two natives. Indians could no longer administer justice to whites in their territory and as a result, lawlessness abounded. The US used the increase in criminal activity as an argument that the tribe could not maintain order. As a result, the US argued it must govern for the natives. In 1885, the US assumed jurisdiction over all crimes in Indian Territory with the Major Crimes Act. In 1889, a federal court opened in the territory, ending any remaining tribal control.<sup>92</sup>

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<sup>89</sup> McLoughlin, *After the Trail of Tears*, 266-7; *Cherokee Tobacco Case*, 78 US 616 (US Supreme Court, 1870).

<sup>90</sup> McLoughlin, *After the Trail of Tears*, 266-7; *Cherokee Tobacco Case*, 78 US 616 (US Supreme Court, 1870).

<sup>91</sup> McLoughlin, *After the Trail of Tears*, 267, 299.

<sup>92</sup> Conley, *The Cherokee Nation*, 181, 185-6; Terrel Shields, "Zeke Proctor and the Goingsnake Massacre," Rootsweb. [http://www.rootsweb.ancestry.com/~okdelawa/bios/protctor\\_zeke.htm](http://www.rootsweb.ancestry.com/~okdelawa/bios/protctor_zeke.htm) (accessed April 2010); US Marshals Service, "History-Line of Duty Deaths Prevalent in the Old West," <http://www.usmarshals.gov/history/line-of-duty-old-west.htm> (accessed April 2010); Kelly Agnew, "The Goingsnake Tragedy: Conflict and Compromise, Cherokee Style," *Organization of American Historians* 2

After undermining tribal legal jurisdiction, the federal government continued to work towards the further assimilation of Indian people to mainstream American society and abolishing tribal governments. In addition, reformers and white settlers promoted allotment as a solution to the "Indian problem," as well as a method ultimately to convert Indian Territory into a state. Defined as the policy of dividing tribal lands held communally into individually owned private property, allotment was intended to end all formal barriers dividing natives from the American population. Several earlier treaties with land cession aspects, including the Treaty of 1866, contained allotment clauses to be enacted when the tribe deemed themselves ready. In the late nineteenth century the US deemed the Indians ready.<sup>93</sup>

Although legislators had been arguing for allotment for a few decades, the Five Tribes resisted the policy by constantly keeping representative delegates in Washington, DC. The most support and progress towards private ownership came with its adoption by reformers who called themselves "friends of the Indians," including Senator Henry Dawes. During a speech at the Lake Mohonk Conference in 1885, Dawes stated that although the Cherokee Nation lacked extreme poverty and homelessness, the tribe could advance no further because "There [was] no selfishness, which is at the bottom of civilization."<sup>94</sup> This sentiment portrays the ethnocentricity of American reformers and legislators at the time. Dawes blamed communal land ownership for

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(Spring 1987): 33; McLoughlin, *After the Trail of Tears*, 299-301; Lawrence C. Kelley, *Federal Indian Policy* (New York: Chelsea House Publishers, 1990), 299-301; US Congress. *The Major Crimes Act. United States Attorney's Manual* (Washington, DC: US Department of Justice, 1997); Rolison, "The Cherokee Nation from Indian Territory to Statehood and the Impact of Allotment"; Treaty with the Cherokees, 1866. July 19, 1866 [Kappler]; Thomas J. Morgan, "Statement on Indian Policy..." 51st Congress, 1st sess. House Executive Document 1, pt. 5, Vol. II, Serial 725. Washington, DC, pg. 3-4.

<sup>93</sup> Treaty with the Cherokees, 1866. July 19, 1866 [Kappler]; Denson, *Demanding the Cherokee Nation*, 202, 213; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, ix.

<sup>94</sup> Conley, *The Cherokee Nation*, 193; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*, 3; Platt, "Problems in the Indian Territory," 195; Alexandra Harmon, "American Indians and Land Monopolies in the Gilded Age," *The Journal of American History* 90 (June 2003), 106, 109; Hiram Price, "Allotment of Land in Severalty and a Permanent Land Title," 47th Congress, 2nd sess., House Executive Document 1, pt. 5, Serial 2100. Washington, DC, October 24, 1881; Henry L. Dawes, "Solving the Indian Problem." *Fifteenth Annual Report of the Board of Indian Commissioners*. Washington, DC, 1883.

illegal white intrusion into Indian Territory as they saw no organized homesteads, law and order, and assumed it was open land subject to no jurisdiction.

At the same time, reformers also endorsed private property as the foundation of American society and a way to prevent paucity and reliance on the US for subsistence. This belief contradicted Dawes' statements regarding the tribe lacking homelessness and poverty. However, in American society, the ownership of private property (especially land) marked prosperity. The Indian Rights Association supported opening surplus lands to white settlement because they believed it would accelerate assimilation as the natives would live among and learn from their Anglo American neighbors. Other reformers wanted to immediately grant US citizenship to natives and created boarding schools to separate the children from their parent's culture. Ultimately, reformers justified their actions with the argument that allotment served as the only way to save natives from inevitable extinction. They believed their culture would not survive the influx of American settlers and would eventually die out. Concurrently, these people did not mind destroying what they viewed as an inferior culture in order to "save" the natives.<sup>95</sup>

The US not only wanted to push the Indian to become a yeoman farmer, but also viewed allotment as a way to end tribal governments. The US would benefit from a lack of tribal government because the natives would have no organized structure from which to organize and protest US policy. In addition, the federal government would not have to negotiate or work with tribes in a manner similar to foreign nations. Legislators could make decisions as they saw fit, since they already characterized Indian land as property of the federal government and that

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<sup>95</sup> Henry L. Dawes, "Solving the Indian Problem." *Fifteenth Annual Report of the Board of Indian Commissioners*. Washington, DC, 1883; Platt, "Problems in the Indian Territory," 195; Denson, *Demanding the Cherokee Nation*, 201, 208, 210-11, 217, 225; Hagan, *Taking Indian Lands*, 5, 10; Harmon, "American Indians and Land Monopolies in the Gilded Age," 106, 109; Rolison, "The Cherokee Nation from Indian Territory to Statehood and the Impact of Allotment," 49, 65; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 1.

natives occupied it at the president's consent. In regards to treaties conveying land ownership to the tribes, officials maintained that since both parties broke these agreements, they were void.<sup>96</sup>

As a result of varying reactions to these extreme external pressures, factionalism reemerged during the late-nineteenth century regarding allotment. Like during removal, these divisions ultimately weakened any opposition against private ownership. Traditionals opposed allotment, wanting to continue their practice of holding land communally, while Progressives favored assimilation as they already lived among and similarly to Anglo Americans. Officially, and despite the political maneuvering of each faction, the Cherokee Nation formally maintained a stance against negotiating with the US regarding private ownership. One Cherokee politician stated that if they agreed to allotment, the people would become like the American poor who did "not own a foot of the earth's surface in which they could be buried."<sup>97</sup>

In addition to the fact that they didn't believe in private ownership, Traditionals also knew the US wished to end the Cherokee Nation as a sovereign nation, perhaps also even their culture and the people themselves. Traditionals usually rejected any assimilation and strove to preserve their culture, believing the tribe's difficulties resulted from turning away from their heritage. To them, communal land also represented security and remained more important than any economic opportunity in American society. Importantly, many Traditionals remained incapable of unrestricted interaction with whites because they did not speak English or understand private markets and trade.<sup>98</sup>

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<sup>96</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood and the Impact of Allotment," 47, 65; Hagan, *Taking Indian Lands*, 6; Denson, *Demanding the Cherokee Nation*, 181, 206, 215.

<sup>97</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood," 65, 76; Denson, *Demanding the Cherokee Nation*, 196; Harmon, "American Indians and Land Monopolies in the Gilded Age," 126; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 10, 17.

<sup>98</sup> Harmon, "American Indians and Land Monopolies in the Gilded Age," 125; Denson, *Demanding the Cherokee Nation*, 216; Conley, *The Cherokee Nation*, 196, 198; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 65.

Cherokee officials used the Traditionals and their associated image by whites as "weak and unenlightened" to argue against a change in US policy, which revolved around a debate over the best action for these people, marking a change in tactics.<sup>99</sup> Previously, the tribe argued that their progressive achievements (living a sedentary agriculture lifestyle with an Anglo style government) gave them the right to be left alone. Now, the Cherokee changed their position, pointing out that due to the uncivilized state of most of their people, they needed to prepare and aid them first before any federal interaction. Tribal officials stated the Traditionals (who supported this argument) remained the most vulnerable under allotment and needed paternal care, which the Cherokee system provided better than any other. The Cherokees stated that until all of their people were ready for economic competition with Anglo Americans, the communal system should remain.<sup>100</sup>

Concurrently, most Progressives, and even some tribal leaders, supported allotment and assimilation. Many had intermarried with whites and already had settled on large farms or owned industries, businesses, and maintained commercial interests. The wealthy elite of the tribe mostly consisted of Progressives, with social differences strikingly obvious with the more simple living of the Traditionals. A few well known citizens, such as Elias C. Boudinot, favored the sale of land because they had agreements with and would benefit monetarily from their affiliations with railroads and businesses clamoring for more territory. Many had urged the people to voluntarily own land individually long before the federal government. Other groups joined the Progressives

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<sup>99</sup> Harmon, "American Indians and Land Monopolies in the Gilded Age," 125; Denson, *Demanding the Cherokee Nation*, 216; Conley, *The Cherokee Nation*, 196, 198; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 65.

<sup>100</sup> Denson, *Demanding the Cherokee Nation*, 217.

in supporting allotment, such as freed slaves, who would receive their own land. However, regardless of faction, most Cherokees saw allotment as inevitable.<sup>101</sup>

The 1870s tribal elections centered on reactions to assimilation policies, as well as economic issues. In 1873, Chief Downing died and the people elected William P. Ross as principal chief. Also during this time, political parties shifted, becoming centered on ideas of blood quantum and economic interests and class. A form of populism emerged, with Traditionals dominating the Downing Party and working for lower class interests.<sup>102</sup>

While more cooperative, the factionalism from removal and the Civil War continued. When Stand Watie died in 1871, James M. Bell became the leader of the Watie followers, which became known as the Bell-Boudinot faction. This group, most related by family ties and Civil War alliances, opposed Chief Ross, as well as the Downing Party. Bell-Boudinots remained an alienated fringe faction throughout the 1870s and lobbied for the opening of Indian Territory to white settlers. They never got enough support and momentum to form a full opposition political party.<sup>103</sup>

In the 1875 political campaigns, the Traditionals gained the majority of leadership positions. By the time of these elections, Ross had alienated the Progressives by limiting annuity payments to those "of blood" and also to the Traditionals by not living according to their ancestral ways. In addition, hard economic times worked against the chief, with the populists blaming him. Later, in 1879, Dennis Bushyhead and Rabbit Bunch formed the National Independent Party to work against both the Downing Party and Ross.<sup>104</sup>

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<sup>101</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood," 48, 65, 100-1; Harmon, "American Indians and Land Monopolies in the Gilded Age," 113, 117, 125; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 1, 7, 10; Denson, *Demanding the Cherokee Nation*, 186, 214, 240.

<sup>102</sup> Conley, *The Cherokee Nation*, 185; McLoughlin, *After the Trail of Tears*, 315; Denson, *Demanding the Cherokee Nation*, 185.

<sup>103</sup> McLoughlin, *After the Trail of Tears*, 307, 312-3, 316.

<sup>104</sup> McLoughlin, *After the Trail of Tears*, 313, 316, 365.

In the 1875 elections, the Downing Party selected Charles Thompson, a Traditional spokesperson, as its candidate for chief while the National Party backed William P. Ross. Despite previous intratribal cooperation, opposition between the two parties escalated in violence in 1874, with political motivated killings on both sides during the 1875 election. Ross appealed to Fort Gibson for troops to maintain peace. He did not receive the assistance and only further alienated several Cherokees by inviting outside interference. At the end of the election, both parties claimed a victory and several hundred armed men gathered in Tahlequah. The National Council examined the ballots in the first few weeks of November and declared that Thompson the victor by eleven votes.<sup>105</sup>

As chief from 1875-79, Thompson called for Traditional domination. He served as the second Traditional chief elected after 1827. He sought to restore traditional living to the tribe and opposed any outside interference. Supporting Thompson and the new direction of tribal politics, the Keetoowah Society reorganized as a political party, joining with the Downing Party, to oppose Progressives, who they saw as corrupt. During the 1870s, Congress reviewed several bills that would create territories that would include the Cherokee Nation, and Thompson sent delegates to Washington, DC, to lobby against them. At the same time, the Bell-Boudinots made deals with railroads and businesses, sending their own delegates to support the creation of territories as a way to line their own pockets. Despite Thompson's actions and defeat of the bills, factionalism prevented any progress that would have been obtained with a single, united front.<sup>106</sup>

In 1879, the Cherokees held elections with the same divisions but without as much violence as those in 1875. Due to declining health, Thompson opted not to run again for chief. The National Independent Party selected Dennis Bushyhead while the Downing Party ran David Rowe. Without significant conflict, Bushyhead won the election and served as principal chief

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<sup>105</sup> Harmon, "American Indians and Land Monopolies in the Gilded Age," 119; McLoughlin, *After the Trail of Tears*, 316, 326, 335-7; Denson, *Demanding the Cherokee Nation*, 185.

<sup>106</sup> McLoughlin, *After the Trail of Tears*, 316, 335, 363-6, 352.

until 1887. During his two terms, he dealt with issues such as railroad encroachment, education, white intruders, and the pressing allotment policy.<sup>107</sup>

The 1887 elections featured Joel B. Mayes on the Downing ticket and Rabbit Bunch for the National Party. Mayes won the election in August, but it was contested by the Downing Party. Rabbit Bunch's followers kept Mayes from taking office, and armed members of both sides arrived at Tahlequah. In January 1888, armed Downing Party members invaded the executive offices and installed Mayes as chief. Bushyhead willingly retired, preventing violence. Although Mayes identified well with the people and served from 1887-91. The new chief dealt with allotment as the US began to take action to enforce its new policy.<sup>108</sup>

The assimilation policy that had been debated for a while by US politicians came forth with the passage of the 1887 General Allotment Act, also known as the Dawes Act for Senator Henry Dawes, the federal government received the authority to survey and divide tribal lands and override native governments with state/territorial and local jurisdiction. The president directly oversaw the assessment of territory, the preparation of tribal rolls, and the assignments of individual lots. The law stated that tribal land would be divided into one hundred sixty acres plots per head of household, eighty acres to single people over eighteen years of age and orphans, and forty acres to remaining single people under eighteen. The US would hold the land in trust for five years, during which it could not be sold or leased without the permission of the federal government. The land would remain exempt from US taxes for the first twenty five years to enable the owner to establish a successful farm. Natives could choose their own land within the first four years but if they failed to do so, officials would assign a plot to them. As a result, assimilation was not optional. Along with land, the natives would become US citizens and subject

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<sup>107</sup> Cole Delashaw, "Dennis Wolfe Bushyhead," *Encyclopedia of Oklahoma History and Culture*. <http://digital.library.okstate.edu/encyclopedia/entries/B/BU015.html> (accessed May 4, 2010); McLoughlin, *After the Trail of Tears*, 365.

<sup>108</sup> John Bartlett Meserve, "The Mayes," *The Chronicles of Oklahoma* 15 (March 1937): 56-65; Hagan, *Taking Indian Lands*, 12; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 64, 69, 76-7.



to territorial laws. Surplus land would become US public domain and opened for settlement. Although the Five Tribes originally remained exempt from the act, allotment became an unavoidable policy.<sup>109</sup>

When Chief Mayes died in 1891, the National Council selected C. J. Harris to serve until the end of his term in 1895. Harris spent his time in office dealing with the proposed application of allotment to the Five Tribes. Harris negotiated the sale of the Cherokee Outlet and also negotiated with the Jerome and Dawes commissions, both created to enforce allotment in Indian Territory.<sup>110</sup>

During allotment for the rest of the tribes, the US created the Jerome Commission as politicians and settlers coveted the six million acre Cherokee Outlet. The commission began negotiations with the tribe for the sale of the outlet in 1889. This action also broached the subject of allotment. As they did with the Dawes Commission, the tribe remained uninterested in anything to do with any loss of territory.<sup>111</sup>

The tribe especially opposed the sale of the Cherokee Outlet because it served as the nation's primary source of income. In 1883, they leased the land to the Cherokee Livestock Association, a group of cattlemen from Kansas, for \$100,000 a year. In 1889 they received \$200,000 for the renewed lease. The cattlemen opposed the allotment and sale of the outlet because they received a better price from the tribe than they would the federal government. Also,

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<sup>109</sup> Francis Paul Prucha, *Americanizing the American Indian: Writings by 'Friends of the Indian,' 1800-1900* (Lincoln, NE: University of Nebraska Press, 1978), 6; McLoughlin, *After the Trail of Tears*, 96, 368; Denison, *Demanding the Cherokee Nation*, 213-4; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 1; Kelley, *Federal Indian Policy*, 71-5; Conley, *The Cherokee Nation*, 193-5; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 50, 65-6.

<sup>110</sup> Gaston L. Litton, "The Principal Chiefs of the Cherokee Nation," *The Chronicles of Oklahoma* 15 (September 1937): 253-70.

<sup>111</sup> Conley, *The Cherokee Nation*, 189.

if the land was sold as individual homesteads it would no longer be open range and fit for cattle.<sup>112</sup>

In 1890, the US began implementing various strategies to persuade the tribe to sell the outlet. President Harrison announced that livestock could no longer graze in the area, ending the lease with the Cherokee Livestock Association that brought in a substantial portion of the tribe's operating budget. Congress then announced the US would support illegal settlement of whites immigrating from Kansas rather than respect and enforce treaty obligations. The US argued that a portion of the Treaty of 1866 gave it the right to the title of the outlet if the tribe did not currently use the land, meaning farming and living as Anglo Americans. Leasing obviously did not constitute active use. The federal government also determined the lease of the outlet illegal, since by treaty the US could purchase the land and therefore, the Cherokee had no right to loan it to anyone else.<sup>113</sup>

With the loss of income from the outlet leases, the Cherokees were forced to begin negotiations for sale. They engaged the advice of two law firms to stall the passage of US legislation calling for forced acquisition of the outlet. Chief Mayes believed that the nation, as the seller, should stall bargaining in order for the property value of the land to increase. The Jerome Commission offered \$1.25 per acre, but the tribe refused as they had previously received an offer of \$3 per acre. Both sides continued to haggle over the value of the outlet, delaying an agreement until 1892.<sup>114</sup>

The Jerome Commission and Cherokee delegation jockeyed for the upper hand in negotiations, engaging in a form of diplomatic chess. The officials recognized the natives as intelligent and skilled politicians, and as a result refrained from the usual implied threats and half

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<sup>112</sup> Conley, *The Cherokee Nation*, 187-9; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 69-70; 74.

<sup>113</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood," 70-3; Conley, *The Cherokee Nation*, 189; Hagan, *Taking Indian Lands*, 85; Denson, *Demanding the Cherokee Nation*, 222.

<sup>114</sup> Hagan, *Taking Indian Lands*, 14-5, 88.

truths utilized against natives with less experience dealing with Anglo Americans. Eventually, the Cherokees lost their bargaining position as they endured a particularly difficult year. They declared they had made the final offer in December 1892. The Jerome Commission promised an additional \$80,000, but the natives declined, stating they would accept \$8,595,736.12. The commission agreed and submitted the paperwork by which the US purchased the 6,022,754 acres. The National Council quickly ratified with the support of the majority of voters on January 4, 1892. Each Cherokee citizen received a payment of \$265.65.<sup>115</sup>

During the sale of the Cherokee Outlet, the white settlers in Indian Territory began calling for their own government. On May 2, 1890, the Organic Act created Oklahoma Territory. The act provided rules for its governance and originally only applied to the Unassigned Lands opened to settlement in 1889 but eventually included the Oklahoma district and Indian Territory. Territorialization, besides violating the terms of several treaties, meant continued assimilation and the eventual dissolution of tribal government.<sup>116</sup>

Due to previous lobbying and negotiations, the Five Tribes remained exempt from the Dawes Act for a time. However, this was most likely due to the fact that Congress needed to deal with the legal issues raised by changing the title to their lands from the methods outlined in previous treaties. In order to force allotment, the federal government had to negotiate and come to an agreement with each of the Five Tribes. In 1893 Congress passed an amendment to the General Allotment Act to include the previously exempted tribes. The US sent the Dawes Commission to negotiate an agreement for allotment with the remaining tribes.<sup>117</sup>

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<sup>115</sup> Hagan, *Taking Indian Lands*, 87, 96, 144, 152-3, 155-60, 163-4; Conley, *The Cherokee Nation*, 189; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 71-5.

<sup>116</sup> McLoughlin, *After the Trail of Tears*, 96-7; Conley, *The Cherokee Nation*, 188; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 78.

<sup>117</sup> Harmon, "American Indians and Land Monopolies in the Gilded Age," 107; Denson, *Demanding the Cherokee Nation*, 216; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 66; Kelley, *Federal Indian Policy*, 76; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, ix, 1, 3; Conley, *The Cherokee Nation*, 194.

The Dawes Commission traveled throughout Indian Territory from 1894-96 in an attempt to secure agreements for allotment. The commission initially just sought responses from native leaders and attended tribal council meetings to speak on the advantages of private property. In 1894, only the Creeks and Cherokees responded to their correspondence. The commission tried to convince the indigenous that they maintained a voice in their future while simultaneously politely threatening them. They informed the natives that they found tribal governments no longer useful, warning them if they did not negotiate the US could not protect them from the assaults of squatters and business interests.<sup>118</sup>

The commission wrote to Chief Harris in May 1894 to request a meeting, informing him that the US would impose the policy and take charge of their government regardless. During their first meeting, Harris told the US officials he did not have the appropriate authority to negotiate, the decision required more of a consensus. He stressed that the Cherokee "opposed any kind of change," especially allotment.<sup>119</sup>

On July 25, 1894, the commission sent the tribe an official written proposal while visiting the nominating conventions of the Downing and National parties. Harris stated that he would not meet to negotiate since his term as chief was coming to an end, but he promised to submit the proposal to his successor.<sup>120</sup>

The Cherokees chose Samuel Houston Mayes, brother of Joel B. Mayes, as principal chief in an uneventful election. Mayes served from 1895-1899, during the most contentious period of allotment. Mayes dealt with the pressure from the Dawes Commission seeking to force allotment as the majority of Cherokees still opposed the policy. Mayes refused to meet with the

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<sup>118</sup> Platt, "Problems in the Indian Territory," 195; Denson, *Demanding the Cherokee Nation*, 233; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 9.

<sup>119</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 4, 5.

<sup>120</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 5, 9-10.

commission several times, stating the nation remained forever opposed to any changes. Even worse, the chief faced the legislation that marked the end of tribal governments.<sup>121</sup>

When the Dawes Commission failed to find any tribal leaders willing to negotiate, they traveled throughout Indian Territory to speak with any citizens they could find. Most Traditionals opposed allotment, so the officials tried to find natives who supported the policy to help them promote to the others. The commission found those from various factions with personal slights. The commission heard stories of corruption from the Progressives and intermarried whites. These discontented citizens provided the commission and Congress with evidence needed to attack the system of independent tribal governments. With this information, the Dawes Commission reported back to Washington, DC, in late 1894.<sup>122</sup>

The Indian Appropriation Bill of 1893 required the commissioners to report their progress to the Secretary of the Interior. On November 20, 1894, the commission filed its first report, blaming their lack of progress on tribes refusing to negotiate. The report also described the harsh conditions in Indian Territory, including that lawless white settlers had overrun the land, and that tribal elites (Progressives) exploited the communal land. Many Americans had married Indian women and taken over large portions of territory. The commission stated the resistance they encountered mostly came from the corrupt, who wanted to keep their property and influence.<sup>123</sup>

In addition, the commissioners launched an attack against tribal governments by describing them as run by the corrupt "mixed blood" elites and intermarried whites at the expense of the "full bloods." Due to the supposed incompetent tribal governments and courts, crimes such as robbery and murder remained unpunished. In the negligence of order, the officials reported that

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<sup>121</sup> Larry O'Dell, "Samuel Houston Mayes," *Encyclopedia of Oklahoma History and Culture*. <http://digital.library.okstate.edu/encyclopedia/entries/M/MA045.html> (accessed May 4, 2010).

<sup>122</sup> Hagan, *Taking Indian Lands*, 164-5; Harmon, "American Indians and Land Monopolies in the Gilded Age," 127; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 6-8, 13.

<sup>123</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 8.

the natives had violated treaty terms, in which they held land in trust from the US. Dawes recommended that the US revoke the autonomy of the tribes and either enforce treaty stipulations or "discharge the trustees."<sup>124</sup> The commission concluded their report by suggesting Congress should ignore treaties, proceed with allotment, and end tribal governments.<sup>125</sup>

The first report of the Dawes Commission caused considerable controversy. Critics in Washington, DC, stated the officials misrepresented information in order to persuade Congress to open land for settlement. Once the report was printed and widely distributed, it caused angry reaction amongst the natives. Each of the Five Tribes sent delegations to Washington, DC, to counter the growing sentiment against tribal government. Chief Mayes called the allegations, "all a lie, false as hell."<sup>126</sup> The National Council sent a six page reply to the report to the capitol on December 8, 1894.

The Dawes Commission returned to Indian Territory, establishing its headquarters in Muskogee. They set to work surveying Cherokee lands, even though no agreement had been reached with the tribe. As in 1894, native leaders avoided meeting with the officials, always stating they lacked authority to negotiate until their legislatures granted it, which continued to refuse any action.<sup>127</sup>

Again without any marked progress, the Dawes Commission returned to Washington, DC, to give its second report on November 18, 1895. Officials repeated most of the information from the previous year, stating that conditions had not improved. Importantly, the report emphasized the belief that natives remained incapable of self government. Dawes stated that he felt it impossible to achieve his goals through negotiation and recommended that Congress take

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<sup>124</sup> Denson, *Demanding the Cherokee Nation*, 234; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 8.

<sup>125</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 8.

<sup>126</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 8.

<sup>127</sup> Hagan, *Taking Indian Lands*, 164-5; Harmon, "American Indians and Land Monopolies in the Gilded Age," 127; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 6-8, 13.

control of the area and establish a territorial government without any formal agreement with the tribes.<sup>128</sup>

The second report caused the same controversy as the first. On January 15, 1896, Chief Mayes sent a twenty seven page letter of reply to Congress. He argued that the commission misrepresented the conditions in his territory. Mayes said Cherokees remained "contented with their condition," citing examples of Supreme Court cases to prove the federal government had "no authority to legislate away their treaty rights."<sup>129</sup>

Frustrated by the lack of results by the Dawes Commission, Congress passed the first in a series of acts that increased its to impose allotment, hindering tribal authority. In February 1896, the Committee on Indian Affairs gave the commission the authority to determine the citizenship of each tribe, creating rolls the US would utilize for enrollment for allotment. Other legislators proposed harsher and more forceful measure to organize Indian Territory, but President Cleveland preferred to negotiate with the tribes.<sup>130</sup>

The Dawes Commission returned to Indian Territory for the third time in May 1896, establishing its headquarters in Vinita within the Cherokee Nation. The officials began processing applications for tribal citizenship as well as continuing to negotiate allotment agreements. Dawes decided to use existing tribal rolls and add names to them as he believed many were left off due to tribal corruption and political conflict.

The process of determining citizenship proved difficult as the commission had only three clerks, a poor organizational system, and a limited time period. After the commission finished enrolling natives, the federal court reviewed appealed cases for those who believed they were wrongfully left off of the rolls. In addition, each application also had to be sent to the tribal

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<sup>128</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 10.

<sup>129</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 10.

<sup>130</sup> Hagan, *Taking Indian Lands*, 164; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 12.

chiefs, who had to approve or reject it within thirty days. Tribes hired their own lawyers to prevent the commission from adding thousands of people they considered intruders as they had never held tribal rights. The Dawes Commission utilized blood quantum requirements, which excluded some natives as they could not prove they held at least one-half native ancestry. Controversy remained constant regarding who to include on rolls, which came with shares of tribal land and property worth hundreds of millions of dollars.<sup>131</sup>

The Cherokees vehemently opposed the commission, still refusing any cooperation. Some delayed the policy by providing enrollment officers the names of all the dogs and horses in their villages for the assignment of a lot. Others flatly refused to put their names on the rolls or answer any questions. Several natives retreated to settle deep in the hills to avoid contact with the US officials. However, as they supported the practice of private property, the Progressives cooperated and enrolled.<sup>132</sup>

The Dawes Commission accepted citizenship applications until September 10, 1896, and later enrolled tribal citizens without their consent. After the commission finished, and after the federal court reviewed appealed cases, the US denied two-thirds of the 300,000 applicants. Under US law, the Dawes Rolls remained the final authority on tribal membership. At this point, the tribes no longer determined the requirements of becoming or being a citizen, a primary marker of self-determination. The commission continued its survey work from 1896 to 1907 when the rolls finally closed.<sup>133</sup>

After the closing of the rolls, the Dawes Commission sought to enroll each tribal citizen who did not send in an application. Congress debated passing additional legislation after several tribes refused to negotiate. The change of federal administration in 1897 ushered in officials even

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<sup>131</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 16.

<sup>132</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood," 79; Conley, *The Cherokee Nation*, 198.

<sup>133</sup> Hagan, *Taking Indian Lands*, 165; Denson, *Demanding the Cherokee Nation*, 218; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, ix, 16, 19.



more willing to force allotment. President Cleveland had always favored negotiation over force but his successor, William McKinley, was willing to utilize all the power of the federal government necessary to achieve allotment. Those eager for economic gain pushed for these bills and statehood, while the opposition from the Five Tribes weakened due to internal dissension. From these interests came the Curtis Act in 1898, which officially ended US recognition of tribal governments and any sovereign authority of the natives.<sup>134</sup>

The Curtis Act terminated tribal governments and instituted a civil administration, created by the US, for all of Indian Territory. The act required all to submit to allotment, which paved the way for statehood for the territory. Tribal governments would continue until all land had been allotted to aid in speeding along the process. However, any legislation passed by tribal councils after 1898 required approval of the president. In addition, the US assumed control over civil and criminal issues in Indian Territory, fully ending any native jurisdiction. Lastly, the act authorized the Dawes Commission to begin assigning private allotments as soon as citizenship rolls were completed with or without the consent of American Indians.<sup>135</sup>

By 1898, the Dawes Commission had signed agreements with all of the Five Tribes except for the Cherokees. The Curtis Act seemed to target specifically the opposition of the Traditionals, who refused to even speak with the commission, including concerning making rolls for the freedmen who they did not see as tribal citizens. After the act, US officials gained the authority to enroll all citizens and punish anyone hindering their work. The Cherokees attempted

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<sup>134</sup> US Congress. *The Curtis Act*, June 28, 1898. 55th Congress, 2nd sess., 1898; McLoughlin, *After the Trail of Tears*, 376; Harmon, "American Indians and Land Monopolies in the Gilded Age," 107; Conley, *The Cherokee Nation*, 196-7; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 23, 33-4, 36, 38; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 80.

<sup>135</sup> US Congress. *The Curtis Act*, June 28, 1898. 55th Congress, 2nd sess., 1898; McLoughlin, *After the Trail of Tears*, 376; Harmon, "American Indians and Land Monopolies in the Gilded Age," 107; Conley, *The Cherokee Nation*, 196-7; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 23, 33-4, 36, 38; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 80.

to fight the new legislation in US courts because it violated previous treaties but eventually they faced no other choice but to accept allotment.<sup>136</sup>

Regardless of US laws and actions, the Cherokees still held an election in 1899. Wolf Coon ran for the National Party and Thomas Buffington represented the Downing Party. Despite a lack of active campaigning, Buffington won by a majority of approximately four hundred votes. During his term from 1899-1903 Buffington served concurrently with the final arrangements of allotment. As a supporter of the Curtis Act, the chief spent most of his time attempting to persuade his people to accept their new status within the US. The Traditionals continued to refuse and many rebelled.<sup>137</sup>

The Dawes Commission did not begin the enrollment of the Cherokees until eighteen months after the passage of the Curtis Act. The officials waited because, as the largest of the Five Tribes, the Cherokees had the potential to cause problems and would most likely put up the most resistance. In addition, allotment remained complicated for this tribe as they had adopted the Delaware Indians on April 8, 1867, and the ambiguity of the signed document for this action led to a disagreement on property rights. Similar conflicts occurred when the Shawnees were moved into the same territory on June 7, 1869. Nevertheless, the commission continued enrollment and detailing tribal citizenship rolls.<sup>138</sup>

Forced to negotiate, the Cherokee delegates on January 7, 1889, agreed to submit an agreement to allot their land and dissolve their government to the people. A majority of citizens voted for the agreement on January 31. Many realized that earlier refusing the policy had cost them more favorable terms, and must now viewed private ownership as inevitable. For an

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<sup>136</sup> US Congress. *The Curtis Act*, June 28, 1898. 55th Congress, 2nd sess., 1898; Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 33, 37-8; Conley, *The Cherokee Nation*, 197.

<sup>137</sup> US Congress. *The Curtis Act*, June 28, 1898. 55th Congress, 2nd sess., 1898; John Bartlett Meserve, "Chief Thomas Mitchell Buffington and Chief William Rogers," *The Chronicles of Oklahoma* 17 (June 1939): 135-46.

<sup>138</sup> Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 105.

unknown reason, Congress refused to ratify this agreement but passed the results of a different negotiation that took effect in April 1900. Each citizen received an equal share of lands in the form of eighty acres and an equalization payment from the proceeds of excess land. The property would remain in trust for twenty five years, ineligible for sale, lease, or taxation. These exemptions served to give the natives time to learn farming for individual profit before having to pay taxes. At the end of the twenty five years, each would receive a title and unrestricted lease to their plot. The Dawes Commission began its work amongst the Cherokees in the spring of 1902, the same year the tribe signed their official allotment agreement. The dismantling of the traditional communal ownership and tribal government began in 1903.<sup>139</sup>

While the majority of the tribe had resigned themselves to their fate, a few Traditionals continued to rebel. The Keetoowah Society actively opposed allotment beginning in the 1890s. As implementation began, they harassed and interfered with the US officials until their leaders faced jail terms. The group softened its anti-allotment stance around 1900, but many Traditionals did not wish to surrender. A member of the National Council, Redbird Smith formed a more traditional group, the Nighthawk Keetoowah Society. Separate from the Keetoowah Society, the Nighthawks soon grew to 5,500 members consisting of mostly Traditionals.<sup>140</sup>

Smith kept the opposition to allotment alive, vowing to return the tribe to traditional ways. The Nighthawks demanded Americans honor all treaties and leave the Cherokees alone. In November 1890, Smith sent a petition to Washington, DC, to state that the Nighthawks did not "recognize the right or authority of the officers of the U.S." to make a roll or determine Cherokee

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<sup>139</sup> Henry Dawes died in 1903 and was replaced by Tams Bixby, but the commission retained the founder's name. The 1900 agreement also called for the sale of *The Cherokee Advocate*. Conley, *The Cherokee Nation*, 197-8; Rolison, "The Cherokee Nation from Indian Territory to Statehood," 94.

<sup>140</sup> Denson, *Demanding the Cherokee Nation*, 218.

citizenship. They gave notice that "Keetoowah or full blood, Cherokees will not be enrolled...except under protest."<sup>141</sup>

As this resistance grew, the US became more aggressive to achieve the enrollment of all Indians, sending out US Marshals to force natives to sign for allotments. Smith and his followers faced jail sentences and fines as they hid from the officials in the eastern hills. In February 1902, the US District Court in Muskogee ordered Smith and eleven other Cherokees to appear at its office on March 15, 1902, to be enrolled. Smith appeared on the assigned date but refused to enroll. The court ordered the Nighthawks to "be confined in the U.S. jail until they do enroll." After a night in jail, Smith appeared before the Dawes Commission, which enrolled him as three-fourths Cherokee and also his children. Many of the others finally registered, but some still continued to refuse. The Dawes officials enrolled the remaining rebels without their consent.<sup>142</sup>

Buffington failed to gain nomination in the 1903 Cherokee elections. Instead, William C. Rogers ran for the Downing Party and E. L. Cookson represented the National Party. Rogers won and served as the last elected chief under the Curtis Act. Since the Cherokee government only existed after 1898 to finish the allotment process, Rogers' role remained mostly honorary, as the US had assumed all major functions of the nation.<sup>143</sup>

Even though some felt resigned, most Cherokee still opposed allotment. Tribal citizens began to view Rogers as too cooperative with the US government. When he refused to call the usual biennial election of the National Council, many saw it as an act of tyranny preventing the

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<sup>141</sup> Kent Carter, "Dawes Commission." *Encyclopedia of Oklahoma History and Culture*. <http://digital.library.okstate.edu/encyclopedia/entries/D/DA018.html> (accessed March 4, 2010), 196-8; Conley, *The Cherokee Nation*, 198.

<sup>142</sup> Conley, *The Cherokee Nation*, 196-8; Carter, "Dawes Commission," 197-9.

<sup>143</sup> Meserve, "Chief Thomas Mitchell Buffington and Chief William Rogers," 135-46; Conley, *The Cherokee Nation*, 198.

constitutional right of the people to select their representatives. Internal dissension occurred, leading, yet again, to the US interfering and overriding the decisions and actions of the tribe.<sup>144</sup>

With the sometimes violent factionalism that began and continued after removal from the east, the Cherokee continued to face these intratribal fissures throughout the nineteenth century and up to the twentieth. As a result, the Cherokee were politically weakened against the new US policy of allotment, even impeaching their chief in the eleventh hour of the US recognition of their government. However, after facing the dissolution of their tribal government, the factions realized they needed each other in order to have a chance of improving conditions for their people as well as continuing their way of life.

These previous events illustrated the long history of intratribal factionalism within the Cherokee tribe. The conflicts that began with the internal reactions to the external pressures of removal, uniting into a single tribal government in Indian Territory, and involvement in the American Civil War affected willingness to cooperate. The new generation of leaders from the 1870s-1880s lacked these intense grudges and as a result were able to work together and create a golden era for the Cherokees. This progress ended as the US passed assimilationist Indian policies, causing the tribe to once again split over these new external issues. This level of intratribal cooperation would not be seen again until the 1920s. However, the leaders during the 1930s faced more favorable federal Indian policy, taking advantage of the policies of the Indian New Deal.

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<sup>144</sup> Meserve, "Chief Thomas Mitchell Buffington and Chief William Rogers," 135-46; Conley, *The Cherokee Nation*, 198.

## CHAPTER IV

### DISSOLUTION OF A NATION, 1900s-1920s

Many Cherokees had resigned themselves to allotment in the early twentieth century. The tribal government continued but, according to the US, only to facilitate allotment. As allotment took a longer time to implement than estimated for such a large tribe, the US continued to further define and clarify the place of American Indians within its society. In 1905, with tribal dissolution impending, most of the Five Tribes and other tribes in Indian Territory supported a separate Indian state at the same time that white settlers called for statehood for themselves. The last Cherokee council spent their final meetings agreeing to work towards the State of Sequoyah. However, once the change of a native state passed, a group of Cherokees continued to fight allotment. Internal conflict occurred when this group viewed those resigned to assimilation as standing in their way.<sup>1</sup>

With surplus lands after allotment open to white homesteaders, these new arrivals to Oklahoma Territory called for statehood, which would include Indian Territory. Talk of statehood began soon after the establishment of Oklahoma Territory in 1890. The debate between separating or joining the Twin Territories (Oklahoma Territory and Indian Territory) received interest all over the US due to the shift it would cause in the federal government's delegates and representation. As early as 1866, the possibility of Indian Territory becoming a state had been raised as the treaty of that year included language that encouraged the tribes to establish a

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<sup>1</sup> Richard Mize, "Sequoyah Convention." *Encyclopedia of Oklahoma History and Culture*. [www.okhistory.org](http://www.okhistory.org) (accessed March 28, 2016).

territorial government in preparation for further organization by the US. However, statehood served as a further violation of tribal sovereignty as had been promised in previous treaties. This included the Treaty of New Echota, which declared that no other governments would be placed over them. Cherokees feared a territorial government would also lead to the further opening of their land for even more white settlement. Until 1903, the Five Tribes and other tribes in Indian Territory generally opposed all local and national efforts for statehood, regardless of separate or joined with Oklahoma Territory. With the end of tribal government as of March 4, 1907, rapidly approaching, the tribes became more concerned and formed intratribal channels to funnel interest in a separate, single Indian state. Without tribal governments, the natives believed having their own state would enable them to retain self-determination and continue to govern. Mentions of fighting against the Curtis Act and the ending of US recognition decreased at this time, more than likely because an Indian state provided a solution that would enable the tribe to retain their self-determination as a part of a larger indigenous polity.<sup>2</sup>

On August 21, 1905, a statehood convention was held in Muskogee at the Hinton Theatre. The *Muskogee Democrat* called it the "largest Indian meeting ever held in the United States."<sup>3</sup> W. C. Rogers called the meeting to order and introduced Reverend Grant Evans, who gave a blessing. Rogers proclaimed that the "Five Civilized Tribes unanimously favor and seek separate and independent statehood; the said privileges allowed by existing and inevitable

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<sup>2</sup> Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln, NE: University of Nebraska Press, 2004), 2; Mize, "The Sequoyah Convention"; "Treaty with the Western Cherokee, 1828. May 6, 1828. 7 Stat., Proclamation, May 28, 1828." In *Indian Affairs: Laws and Treaties, Vol. II Treaties*, edited by Charles J. Kappler. Washington, DC: Government Printing Office, 1904 [hereafter cited as Kappler]; King, "Introduction," in *The Cherokee Indian Nation*, xvii; Jonita Mullins, "Sequoyah Convention Opened 100 Years Ago to Deal with Issues of an Indian State," *Muskogee Phoenix* (Muskogee, Oklahoma), August 28, 2005. James Vaughan Library, Northeastern State University, Tahlequah, Oklahoma [hereafter cited as JVL]; "Editorial on W. C. Rogers and Green McCurtain," *Bartlesville Enterprise* (Bartlesville, Indian Territory), August 3, 1905. Folder 75, Box 2, William Charles Rogers Collection, Western History Collections, University of Oklahoma, Norman, Oklahoma [hereafter cited as WHC].

<sup>3</sup> "Convention on Statehood, W. C. Rogers, et. al." *Muskogee Democrat* (Muskogee, Indian Territory), August 21, 1905. Folder 78, Box 2, William Charles Rogers Collection [WHC].

treaties.”<sup>4</sup> He also argued “that owing to peculiar conditions existing in the territory it cannot be joined to Oklahoma without doing injustice to the citizens of the former [Indian] territory.”<sup>5</sup> The convention later stated it would call the attention of Congress to the fact that natives, as well as whites, demanded some form of government and that American Indians were fully prepared to assume the responsibilities of that government. They argued that with the dissolution of tribal governments, natives would have nothing “to say about the law that would govern them when they became American citizens” unless they had their own state. In addition, the work of the required constitution committee would also “be proof positive of the ability and brilliancy of the Indians of the five civilized tribes [sic] and of their fitness for self government.”<sup>6</sup> Even though the Cherokees and the other Five Tribes had been operating under constitutional republics for quite some time before the Dawes Act, they still felt the need to prove their governing abilities to the US. Regarding tribal government, however, no amount of experience in politics would stop the course of the assimilation policy.

Rogers called the meeting to order and D. C. McCurtain (son of Chief Green McCurtain of the Choctaws) was chosen as the temporary chairman. The secretary read the list of delegates from the twenty-six districts of Indian Territory and afterwards it was unanimously decided that the chiefs called for the convention would be the Committee on Credentials. W. H. Murray moved that a committee of six representatives of each nation be appointed to a permanent

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<sup>4</sup> William Stryker, editor. “A Proclamation of W. C. Rogers and Green McCurtain,” *The Tulsa Democrat* (Tulsa, Indian Territory), July 14, 1905. Folder 69, Box 2, William Charles Rogers Collection [WHC].

<sup>5</sup> Clyde P. Kendall, editor. “Convention Called by W. C. Rogers and Green McCurtain,” *The Madill News* (Madill, Indian Territory), July 14, 1905. Folder 70, Box 2, William Charles Rogers Collection [WHC]; Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York: Peter Lang, 1996), 9; Jonita Mullins, “Sequoyah Convention Opened 100 Years Ago to Deal with Issues of an Indian State,” *Muskogee Phoenix* (Muskogee, Oklahoma), August 28, 2005 [JVL]; “Convention on Statehood, W. C. Rogers, et. al.” *Muskogee Democrat* (Muskogee, Indian Territory), August 21, 1905. Folder 78, Box 2, William Charles Rogers Collection [WHC]; William Stryker, ed. “A Proclamation of W. C. Rogers and Green McCurtain,” *The Tulsa Democrat* (Tulsa, Indian Territory), July 14, 1905. Folder 69, Box 2, William Charles Rogers Collection [WHC].

<sup>6</sup> “Editorial on W. C. Rogers, Green McCurtain, et. al.” *Broken Arrow Ledger* (Broken Arrow, Indian Territory), August 24, 1905; J. O. McMinn, “Editorial on Convention Call by W. C. Rogers,” *The Francis Bulletin* (Francis, Indian Territory), September 1, 1905. Folder 2, Box 81, William Charles Rogers Collection [WHC].



council. A motion was offered that a committee be appointed from each one of the twenty six recording districts of Indian Territory, to be selected by the various tribal delegations, but it was voted down. Murray's original proposal was accepted. When a more permanent structure was agreed upon, Chief Pleasant Porter of the Creek was chosen as chairman and Alexander Posey as secretary. Resolutions were unanimously passed instructing the delegates to vote for Tahlequah as the state capitol of the native state and to compose a draft of a constitution for Indian Territory.<sup>7</sup>

The members of the convention argued that no procedure of creating new states is in the United States Constitution or laws; instead, they had been admitted to the Union on a case-by-case basis. Rogers and Scott stated that since no constitutional procedure existed, they should be able to create an Indian state because it was not expressly forbidden. They also used the example of other states that were organized with the people of the proposed state petitioning Congress and without an enabling act. Rogers and Scott cited Vermont, Tennessee, Michigan, Arkansas, Florida, Iowa, California, and Oregon as examples. However, the Northwest Ordinance of 1787 provided three provisions for admitting states: a congressionally appointed governor, secretary, and three judges; then an elected assembly and one nonvoting delegate to Congress; and lastly once the population of free males reaches sixty thousand, the territory drafts a constitution subject to US federal approval.

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<sup>7</sup> "Convention on Statehood, W. C. Rogers, et. al." *Muskogee Democrat* (Muskogee, Indian Territory), August 21, 1905. Folder 78, Box 2, William Charles Rogers Collection [WHC]; "News Item of W. W. Hastings," *Stilwell Standard* (Stilwell, Indian Territory), August 10, 1905. Roll 50, Cherokee Nation Papers [WHC]; Myron Boyle, ed. "Editor on W. C. Rogers, et. al." *The Indian Republican* (Tulsa, Indian Territory), July 28, 1905. Folder 74, Box 2, William Charles Rogers Collection [WHC]; J. O. McMinn, "Editorial on Convention Call by W. C. Rogers," *The Francis Bulletin* (Francis, Indian Territory), September 1, 1905. Folder 2, Box 81, William Charles Rogers Collection [WHC]; "Editorial on W. C. Rogers, Green McCurtain, et. al." *Broken Arrow Ledger* (Broken Arrow, Indian Territory), August 24, 1905; "Convention on Statehood, W. C. Rogers, et. al." *Muskogee Democrat* (Muskogee, Indian Territory), August 21, 1905. Folder 78, Box 2, William Charles Rogers Collection [WHC]; Clyde P. Kendall, editor. "Convention Called by W. C. Rogers and Green McCurtain," *The Madill News* (Madill, Indian Territory), July 14, 1905. Folder 70, Box 2, William Charles Rogers Collection, [WHC]; William Stryker, ed. "A Proclamation of W. C. Rogers and Green McCurtain," *The Tulsa Democrat* (Tulsa, Indian Territory), July 14, 1905. Folder 69, Box 2, William Charles Rogers Collection [WHC].

In an additional argument, W. H. Murray argued that two states would not be more expensive to the federal government than one because "most economic governments are the small ones."<sup>8</sup> In addition, denying the people of Indian Territory the right to assemble and propose to Congress admission of the territory was to "deny rights which we believe are guaranteed by the constitution."<sup>9</sup> Those who viewed separate statehood as a means to maintain self-determination for natives sought to operate within the white political system to achieve their goals, a method different than the dissenting Traditional Keetoowahs. The convention adjourned until September 5, when they would hear the reports of the various committees and adopt a constitution.<sup>10</sup>

The convention also cited the language of previous treaties that would support a native state. In the "Act to Provide for the Allotment of Lands of the Cherokee Nation..." from July 1902 abolished tribal government on March 4, 1906.<sup>11</sup> However, that act violated the Treaty of 1835. The natives cited the language of Article 5 of the Treaty of 1835: "The United States covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any state or territory."<sup>12</sup>

Leaving them without a government, but also free from any state or jurisdiction, the only way the US could keep its treaty promises was to give natives their own state according to the convention. The leaders of the meeting clearly sought to navigate within Anglo American law

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<sup>8</sup> "Convention on Statehood, W. C. Rogers, et. al." *Muskogee Democrat* (Muskogee, Indian Territory), August 21, 1905. Folder 78, Box 2, William Charles Rogers Collection [WHC].

<sup>9</sup> William Stryker, ed. "A Proclamation of W. C. Rogers and Green McCurtain," *The Tulsa Democrat* (Tulsa, Indian Territory), July 14, 1905. Folder 69, Box 2, William Charles Rogers Collection [WHC]; Clyde P. Kendall, ed. "Convention Called by W. C. Rogers and Green McCurtain," *The Madill News* (Madill, Indian Territory), July 14, 1905. Folder 70, Box 2, William Charles Rogers Collection [WHC]; Richard Mize, "Sequoyah Convention," in *Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=SE021> (accessed October 11, 2017).

<sup>10</sup> "Editorial on W. C. Rogers, Green McCurtain, et. al." *Broken Arrow Ledger* (Broken Arrow, Indian Territory), August 24, 1905; Mize, "Sequoyah Convention."

<sup>11</sup> US Congress. *Cherokee Agreement Act, April 1, 1890*. 56th Congress, 2nd sess., 1901; US Congress. *Cherokee Supplemental Agreement Act, July 1, 1902*. 57th Cong., 1st sess., 1902.

<sup>12</sup> US Congress. *Cherokee Supplemental Agreement Act, July 1, 1902*. 57th Cong., 1st sess., 1902; "Treaty with the Cherokee, 1835. Dec. 29, 1835. 7 Stat., 311. Proclamation, May 23, 1836." [Kappler].

and treaty making to create a legal basis for their own state with natives making their own decisions. However, Congress had declared the treaty making process ended and null, with several politicians remarking that treaties were no longer valid because the tribe violated their terms as well as the US without providing many examples of such violations.<sup>13</sup>

Choctaw Chief Green McCurtain early on served as a strong supporter of Indian statehood. However, according to *The Signal* newspaper, immediately following the publication of the call for a convention, McCurtain repudiated the use of his name in the cause. He reportedly stated that he was not "in sympathy with the move and that he had been coaxed into allowing the use of his name against his will" and before he fully understood the issue.<sup>14</sup> No such reversal is known of any Cherokee factions or leaders. It is possible that McCurtain, in negotiations for claims with the US on behalf of his tribe, may have feared the federal government would view this involvement as dissent and react less than favorably. During the first convention meeting, Rogers and W. H. Scott addressed the gathering to make the point that they "stood for no political intrigues" and that they did not carry a disloyal spirit or seek any danger of a conflict of authority.<sup>15</sup> Separate statehood was not a sign of rebellion against the United States for having their own tribal governments abolished.

While the indigenous lobbied for their own state, the implementation of allotment and the Curtis Act continued. Tribes still had to prepare for the dissolution of their governments. During the last regular meeting of the National Council in Tahlequah in September 1905, Rogers proposed taking action to settle the business of the tribe before the dissolution of their government. The tribe needed to decide issues such as final land distributions and the

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<sup>13</sup> "An Act of W. C. Rogers (Joint Resolution Calling to Support Separate Statehood)," *Idabel Signal* (Idabel, Indian Territory), October 17, 1905, Folder 96, Box 2, William Charles Rogers Collection [WHC].

<sup>14</sup> J. B. Silvey, ed. "Separate Statehood," *The Signal* (Idabel, Indian Territory), July 27, 1905. Folder 72, Box 2, William Charles Rogers Collection [WHC].

<sup>15</sup> "Convention on Statehood, W. C. Rogers, et. al." *Muskogee Democrat* (Muskogee, Indian Territory), August 21, 1905. Folder 78, Box 2, William Charles Rogers Collection [WHC]; Myron Boyle, ed. "Editor on W. C. Rogers, et. al." *The Indian Republican* (Tulsa, Indian Territory), July 28, 1905. Folder 74, Box 2, William Charles Rogers Collection [WHC].

continuation of the nation's schools. However, going forward any action taken by the Cherokee government required approval of the US Secretary of the Interior and the president.<sup>16</sup>

In order to give the US authorities the opportunity to review the tribe's acts, it needed to submit their provisions by the time Congress convened at the beginning of December. Rogers recommended the creation of a commission of three delegates to represent the Cherokee Nation before the US government and submit their requests. The chief stated that he believed the US President would not withhold approval from reasonable legislation enacted by the National Council to aid in the final disposition of tribal affairs.<sup>17</sup>

An act passed by the council authorized Rogers to create the "Business Commission" to represent the nation in Washington, DC, to close their affairs with the advice and consent of the Cherokee Senate. It would consist of three men, receiving \$15 a day with the maximum allowed for the commissioners capped at \$1,000. However, no payment or compensation would be made until they were able to indicate to the principal chief the willingness of the US government to receive the commission and negotiate final terms. The delegates would meet and negotiate with the Commission to the Five Civilized Tribes (also known as the Dawes Commission), the Secretary of the Interior, and other US authorities. Any agreement the commission made "shall be

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<sup>16</sup> Letter from W. N. Maben on behalf of the Keetoowah Society, Inc. to W. D. Roberts and the Department of the Interior, May 6, 1946. Folder 73, Box 11, Elmer Thomas Collection, Carl Albert Congressional Research and Studies Center, Monnet Hall, University of Oklahoma, Norman, Oklahoma [hereafter cited as ET]; Clyde P. Kendall, ed., "Editorial on W. C. Rogers about Election," *The Madill News* (Madill, Indian Territory), August 4, 1905. Folder 76, Box 2, William Charles Rogers Collection [WHC]; "Editorial on Message by W. C. Rogers," *The Mill Creek Times* (Mill Creek, Chickasaw Nation, Indian Territory), September 29, 1905. Folder 87, Box 2, William Charles Rogers Collection [WHC]; "Message of W. C. Rogers to the National Council," *The Vinita Daily Chieftain* (Vinita, Indian Territory), September 27, 1905. Folder 85, Box 2, William Charles Rogers Collection [WHC].

<sup>17</sup> "Editorial on Message by W. C. Rogers," *The Mill Creek Times* (Mill Creek, Chickasaw Nation, Indian Territory), September 29, 1905. Folder 87, Box 2, William Charles Rogers Collection [WHC]; "Message of W. C. Rogers to the National Council," *The Vinita Daily Chieftain* (Vinita, Indian Territory), September 27, 1905. Folder 85, Box 2, William Charles Rogers Collection [WHC]; "Editorial on Cherokee Council," *The Mannsville News* (Mannsville, Indian Territory), September 22, 1905. Folder 84, Box 2, William Charles Rogers Collection [WHC]; R. H. Elder, publisher, "Editorial on W. C. Rogers," *The Fargo Journal* (Fargo, Indian Territory), September 15, 1905. Folder 82, Box 2, William Charles Rogers Collection [WHC].

binding upon the Cherokee Nation to a popular vote of the Cherokee people and shall not be binding upon the Cherokee Nation unless ratified by a majority vote of the legal voters....”<sup>18</sup> In addition to creating the commission, the final council also made provisions to continue limited government, including the posts of the three commissioners, one clerk, principal chief, three citizenship attorneys, one national attorney, and a secretary/interpreter.<sup>19</sup>

The majority of the business of the final regular council meeting, as well as a special session called by the chief on November 10 in the old capitol building in Tahlequah, focused on supporting separate statehood for Indian Territory and against joint statehood with Oklahoma. In October, the council via unanimous vote passed a joint resolution endorsing the chiefs of the Five Tribes in calling for a convention in Muskogee to adopt a state constitution. The pro-separate state convention with multiple tribes met again on September 8, 1905, to adopt a constitution to be submitted to Congress for approval as necessary to become a separate state.<sup>20</sup> The National Council's resolution cited the legal basis for separate statehood as article 5 of the Treaty of 1835 that read, “The United States covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any state or territory.”<sup>21</sup> According to this treaty, the US could not include tribes within a new state, so the natives should have their own.

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<sup>18</sup> “An Act Approved by W. C. Rogers,” *The Collinsville News* (Collinsville, Indian Territory), November 24, 1905, Folder 97, Box 2, William Charles Rogers Collection [WHC]; *Fargo Journal* (Fargo, Indian Territory), September 15, 1905. Folder 82, Box 2, William Charles Rogers Collection [WHC]; J. W. Quinn, ed., “Last Session of the Cherokee Council, *The Chelsea Commercial* (Chelsea, Indian Territory), October 6, 1905. Folder 91, Box 2, William Charles Rogers Collection [WHC]; “Editorial on Cherokee Council,” *The Mannsville News* (Mannsville, Indian Territory), September 22, 1905. Folder 84, Box 2, William Charles Rogers Collection [WHC].

<sup>19</sup> J. W. Quinn, ed., “Last Session of the Cherokee Council,” *The Chelsea Commercial* (Chelsea, Indian Territory), October 6, 1905. Folder 91, Box 2, William Charles Rogers Collection [WHC].

<sup>20</sup> J. W. Quinn, ed., “Last Session of the Cherokee Council, *The Chelsea Commercial* (Chelsea, Indian Territory), October 6, 1905. Folder 91, Box 2, William Charles Rogers Collection [WHC]; “An Act of W. C. Rogers (Joint Resolution Calling to Support Separate Statehood),” *Idabel Signal* (Idabel, Indian Territory), October 17, 1905, Folder 96, Box 2, William Charles Rogers Collection [WHC].

<sup>21</sup> “An Act of W. C. Rogers (Joint Resolution Calling to Support Separate Statehood),” *Idabel Signal* (Idabel, Indian Territory), October 17, 1905, Folder 96, Box 2, William Charles Rogers Collection,

Along with Rogers and representatives of the Cherokee Nation, the Keetoowah Society also worked towards dual statehood. They made two important alliances for their cause, Robert Owen and Frank J. Boudinot. Owen, 1/16th Cherokee and later one of Oklahoma's first senators, presented a memorial for the Keetoowah Society at the Sequoyah Convention in 1905. Owens and Boudinot had worked together before, successfully prosecuting claims against the US government on the Keetoowah's behalf. Boudinot had been appointed as legal counsel for the society in 1896 and served as its secretary in 1901. This partnership lessened the long standing resentments between the old Treaty Party and Ross Faction. Frank J. Boudinot was a relative of the slain Elias Boudinot and leader of the party initiated by Stand Watie, and it would seem that Boudinot would not want to work with the descendents of the Ross Faction.<sup>22</sup>

A Boudinot/Watie/Ridge descendant working with the traditional Keetoowah when their ancestors had been firmly on the Progressive side illustrates the shift in the new generation of leaders. Boudinots had been in the Treaty Party and fought against the Traditionals in the Ross Party in the early nineteenth century. As that generation passed, those such as Frank J. Boudinot worked with whomever possessed common goals rather than past alliances or familial grudges. Boudinot and his generation did not experience the same intratribal violence, feelings of betrayal, or hardships their relatives had endured, such as the Trail of Tears and the conflict regarding removal, the assassinations of the Treaty Party, or the split during the American Civil War between Ross and Watie followers. Instead he collaborated with anyone he believed shared his goal of opposing assimilation as the best method to preserve Cherokee self-determination. This

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Western History Collections, University of Oklahoma, Norman, Oklahoma; "An Act Approved by W. C. Rogers," *The Collinsville News* (Collinsville, Indian Territory), November 24, 1905, Folder 97, Box 2, William Charles Rogers Collection, Western History Collection, Monnet Hall, University of Oklahoma, Norman, Oklahoma; J. W. Quinn, editor, "Last Session of the Cherokee Council," *The Chelsea Commercial* (Chelsea, Indian Territory), October 6, 1905. Folder 91, Box 2, William Charles Rogers Collection, Western History Collection, Monnet Hall, University of Oklahoma, Norman, Oklahoma.

<sup>22</sup> Letter from Elmer Thomas to Thomas Holt, December 26, 1947. Folder 33, Box 11, Elmer Thomas Collection, Monnet Hall, University of Oklahoma, Norman, Oklahoma; Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton, NJ: University of Princeton Press, 1940), 163; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 9-10.

new generation willing to collaborate without the previous grudges expands, ultimately serving as the beginning indicators of the later cross-factional cooperation of the 1920s.

With the majority of white settlers in Indian Territory against separate statehood, Congress never seriously considered the constitution for the state of Sequoyah. Homesteaders clamored for more land as the population crowded the northeastern US states. Many settlers saw single statehood as a way to remove the restrictions on the sale and taxation of Indian lands from allotment. This would create revenue for the state as well as make available even more land for settlement. In addition, those seeking political balance in Congress would not have agreed to the admission of two Western, radical, and most likely Democratic states rather than just one. Dual statehood supporters faced powerful enemies, such as Judge Thomas H. Doyle from Perry. Doyle testified before the House Committee on Territories that a large number of indigenous in Indian Territory had only a small percentage of blood. The remaining Keetoowah and Crazy Snake Indians (Creek traditionals), who most ardently supported native statehood, existed at such a low population single statehood served as the only logical option.<sup>23</sup>

At the end of July 1905, Rogers announced that he would not call for the scheduled election in early August for National Council members. Instead, he mandated that the current council continue in various special session meetings to wrap up the affairs of the nation. A special session would be held in October but no regular session in November, when the newly elected officers normally would take office. The Cherokee held elections every two years, its Senate consisted of eighteen men and the House held forty.<sup>24</sup>

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<sup>23</sup> Thomas H. Doyle, "Single Versus Double Statehood," *The Chronicles of Oklahoma* V, No. 2 (1927): 276; Leeds, 9-10; Debo, *And Still the Waters Run*, 163-4.

<sup>24</sup> "Editorial on W. C. Rogers," *Pauls Valley Sentinel* (Pauls Valley, Indian Territory), July 20, 1905. Folder 71, Box 2, William Charles Rogers Collection [WHC]; Myron Boyle, ed., "Editorial on W. C. Rogers, et. al," *The Indian Republican* (Tulsa, Indian Territory), July 28, 1905, Folder 74, Box 2, William Charles Rogers Collection [WHC].

Rogers' denial of a new election, which was mandated by tribal law, enraged the opposing faction of citizens who considered the present legislature as full of "Rogers' men" or "progressive men" having the majority of the vote.<sup>25</sup> They stated that the chief did not want to call a new election because he did not want to lose the majority of the National Council vote and was winding up tribal affairs without consulting the Cherokee people. Rogers unofficially stated that the tribal government would soon be abolished so an election was unnecessary, would cause confusion in the business affairs of the tribe, and result in unnecessary expenses.<sup>26</sup>

Previously, little obvious factionalism occurred during the early twentieth century. Most Cherokees had supported a separate indigenous state. However, once it became apparent that goal would not be realized, Progressives such as Rogers became resigned to the doomed fate of the tribal government. Rogers sought to wrap up tribal affairs as best he could before the deadline. Traditionals, such as Boudinot and the Keetoowah were not ready to accept dissolution. They viewed Rogers' refusal to call a regular election as not only capitulating, but also hindering the Traditionals' opposition to the Curtis Act by robbing them of the right to choose the next set of officials who would continue the fight. While no single person or group was blamed overall for assimilation, the Keetoowah viewed Rogers' actions not as a betrayal similar to that of the Treaty Party during the Treaty of New Echota, but as an obstacle to their goal. As a result, they sought to remove the obstacle.

Leading the faction opposing Rogers, Frank J. Boudinot issued a call for an election in August 1905 without the consent of the principal chief or the incumbent National Council. Boudinot represented the mostly traditional faction of the National Party and the Keetoowahs.

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<sup>25</sup> "Editorial on W. C. Rogers," *Pauls Valley Sentinel* (Pauls Valley, Indian Territory), July 20, 1905. Folder 71, Box 2, William Charles Rogers Collection [WHC]; "Cherokee Council by W. C. Rogers," *The Wapanucka News* (Wapanucka, Indian Territory), November 24, 1905, Folder 99, Box 2, William Charles Rogers Collection [WHC].

<sup>26</sup> Paul B. Smith, ed. "Impeachment of W. C. Rogers," *The Indian Citizen* (Atoka, Indian Territory), Folder 110, Box 2, William Charles Rogers Collection [WHC]; Howard J. Matterson, "Editorial On W. C. Rogers," *The Ochelatan* (Ochelatan, Indian Territory), August 11, 1905. Folder 77, Box 2, William Charles Rogers Collection [WHC].



The National Party in several districts nominated council candidates for their party ticket and threatened to proceed with an election as normal. They also claimed their actions would be approved by the Indian agent and inspector.<sup>27</sup>

Those who refused to acquiesce to the terms of the Curtis Act, Frank Boudinot and the Keetoowah, "composed exclusively of fullblooded [sic] Cherokees," planned and called the election of the council that just met at Tahlequah. Nearly every member of this new council was a member of the Keetoowah and "They were acting under the direction of the leaders of that society."<sup>28</sup> The Keetoowahs presented their history and side of the story to a newspaper to ensure they were heard beyond the accounts of Rogers' statements.

At this time, the Society, as it was also known, called itself the "most perfect political organization among the Indians" because the plan of organization laid out at its inception in 1858 still followed to the letter." They called themselves the "Tammany of the Cherokees." The Keetoowah Society was presided over by three head captains. Under these were three captains in each of the nine "fullblood" districts of the Cherokee Nation. This meant there were twenty-seven subordinate captains, who carried out the orders of the head captains. Any communication from the leaders reached the "ears of every member of the society within twelve hours, so perfect is their system of communication."<sup>29</sup> The Keetoowah sought to preserve Cherokee sovereignty by establishing "full blood" dominance in political and social affairs of the nation. Often a secret society, Keetoowah meetings reportedly featured guards posted at a quarter of a mile out on every side of the meeting place and required a password to prove membership and gain access.

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<sup>27</sup> Howard J. Matterson, "Editorial On W. C. Rogers," *The Ochelatan* (Ochelatan, Indian Territory), August 11, 1905. Folder 77, Box 2, William Charles Rogers Collection [WHC].

<sup>28</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping, Folder 127, Box 2, William Charles Rogers Collection [WHC]. This unmarked, unlabeled scrap of newspaper was probably from November 24, 1905. Author and sources are unknown but they correlate with the other scant sources on the Keetoowah.

<sup>29</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping, Folder 127, Box 2, William Charles Rogers Collection [WHC].

Newspapers of the era complained of difficulty in getting an account of their meetings. This secrecy served as another reason for the lack of sources and historiography for this time period.

Composed of a head captain and district captains, the Keetoowah “was organized to prolong the life of a fast dying nation that was being crushed and oppressed... [by] a white man’s civilization.”<sup>30</sup> They ardently believed that “every step that has been taken to dispossess the full-blood [sic] Indian of his home and form of government has been at the hands of the whites or mixed blood.” In 1905, Richard M. Wolfe, Dave Muskrat, and Wolf Coon served as the head captains. Frank Boudinot worked as the English Secretary, Daniel Grits, Cherokee Secretary, and J. W. Dick as the Chief Interpreter.<sup>31</sup>

In the early twentieth century, the Keetoowahs claimed they represented about fifteen thousand families. They protested against allotment because it ended traditional communal land ownership when the Dawes Commission began its work and in 1902 enrolled only under protest. They distinguished themselves from the Nighthawk Keetoowahs, whose members originated in the Keetoowahs and who refused allotments until their leaders were arrested. Of that sect, the society stated it was “a secret society and we know no more of its objects and purposes than the

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<sup>30</sup> “About the Knight Hawks, the Kee-too-wah Society, According to an Old Book,” *The Oklahoma Post* (Oklahoma City, Oklahoma Territory), July 22, 1906; J. C. Starr, interview by James R. Carselowey, “The Keetoowah’s Work of Organization,” volume 103, interview identification 1238, December 14, 1937, J. C. Starr Papers, [WHC]; “The Keetoowah Society Organized Among the Indians,” *Tahlequah Arrow* (Tahlequah, Indian Territory), June 28, 1903; “Kee-too-wahs Secret Organization of the Cherokees Feeling Ugly, Organized, and Protected,” *The Daily Oklahoma State Capital* (Guthrie, Oklahoma Territory), September 14, 1897; Richard F. West, interview by Carl Sherwood, circa 1930s, volume 96, interview identification 0000, Indian-Pioneer Papers [WHC]; J. W. Duncan, “The Keetoowah Society,” *The Chronicles of Oklahoma* 4, no. 4 (September 1926): 251; Dr. Julia Choates, At-Large Councilor on the Cherokee Nation Council, “The Allotment Era Keetoowah Societies,” December 9, 2011, <http://freedmenvscherokeenaation.blogspot.com/2011/12/allotment-era-keetoowah-societies.html> (accessed April 2, 2013); Patrick Mingos, “Are You Kituwah’s Son?: Cherokee Nationalism and the Civil War,” unsubmitted manuscript to *The Chronicles of Oklahoma* (May 7, 1996), 13; Wilma Mankiller and Michael Wallis, *Mankiller: A Chief and Her People* (New York: St. Martin’s Press, 1993), 168-9.

<sup>31</sup> “About the Knight Hawks, the Kee-too-wah Society, ”According to an Old Book,” *The Oklahoma Post* (Oklahoma City, Oklahoma Territory), July 22, 1906.

general public."<sup>32</sup> The Keetoowah asked the Dawes Commission to allow each "full blood" who received their land to file protests against the allotting of land to intermarried whites and freedmen. The Dawes Commission refused to receive those protests but prepared a separate traditional roll.

Within an unmarked newspaper article, under the header "Lost Control in 1887," the Keetoowah detailed the differences between them and the Nighthawk Keetoowah. "The Night Hawks were originally affiliated with the Keetoowahs as an auxiliary organization, but most of them withdrew when the allotment of lands began."<sup>33</sup> The Nighthawks numbered about three thousand at this time. They first refused to have anything to do with any allotment plan of the US government, declining to enroll in 1902. As a result, Redbird Smith and several other leaders were jailed in Muskogee until they would consent to enroll for land. Many of the Nighthawks still refused to accept their deeds. The reiterating of the differences with the Nighthawks portrays the stated wish of the Keetoowahs to show that even though they held views different from the US, the Keetoowahs "have always submitted their plans and views to the proper authorities in a respectful and orderly manner." They also reminded the US that the society, "almost to a man," allied themselves with the Union during the American Civil War.<sup>34</sup>

The year 1887 marked the last time the Keetoowahs had been in power of the Cherokee government, when D. W. Bushyhead served as principal chief. He and the Keetoowahs represented the National Party, which they stated was the equivalent of the Republican political party of the Cherokees. They called Rogers and his Downing Party the Democrats of their nation.

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<sup>32</sup> "After Judge Gill: The Keetoowah Society Denies Making Trouble in the Cherokee Nation," *The Vinita Daily Chieftain* (Vinita, Indian Territory), June 16, 1903; "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping, William Charles Rogers Collection [WHC].

<sup>33</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping, William Charles Rogers Collection [WHC].

<sup>34</sup> "After Judge Gill: The Keetoowah Society Denies Making Trouble in the Cherokee Nation," *The Vinita Daily Chieftain* (Vinita, Indian Territory), June 16, 1903; "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping, William Charles Rogers Collection [WHC].

"The history of the Cherokee nation since it was located in Indian Territory is largely made up of the struggle of these two parties."<sup>35</sup>

Harmony did not exist between the two political parties or factions during election time that year either. During the election of 1887, Joseph B. Mayes (Downing Party) was elected and Rabbit Bunch was the candidate of the National Party. The Nationals held a majority in the House and Senate and stated the Downing Party refused to sit in the council and assist in making an official count of the vote. The Nationals refused to give up the office of principal chief until the official count was finished. The Downing leaders then kicked down the door of the executive offices and their chief took possession. As the election of Chief Mayes was conceded, the Keetoowahs argued they never questioned the legality of this action. This marked "the last struggle of the fullbloods for supremacy in the nation until the present controversy" of Rogers' refusal to call an election.<sup>36</sup>

In 1903, the Cherokee elected Rogers as Principal Chief of the Cherokee Nation. Seen as too cooperative with the federal government in the dissolution of their tribal government by the Keetoowah, the Cherokee impeached him in 1905 over suspicions regarding financial appropriations. As well as the refusal to continue the tribal government, some alleged that Rogers violated his oath of office by refusing to call an election in August 1905, "there upon the people took the matter in [their] own hands."<sup>37</sup>

Boudinot was elected in accordance with Cherokee law to replace him on November 21, 1905. He took the oath of office in the Senate Chamber of the Cherokee National Council in

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<sup>35</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper clipping, William Charles Rogers Collection [WHC]. The faction known as Keetoowahs and the National Party become interchangeable in the 1880s-1900s.

<sup>36</sup> "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper, Folder 127, Box 2, William Charles Rogers Collection [WHC].

<sup>37</sup> George Fields, Jr. to Thos. Ryan, February 9, 1906, Box 8, Cherokee Nation Correspondence, June 1902 to June 30, 1903, Box 3, Cherokee Nation Correspondence December 1897 to December 1898, Dawes Commission Records, Research and Archives Division, Oklahoma Historical Society, Oklahoma History Center, Oklahoma City, Oklahoma; Conley, *The Cherokee Nation*, 198.

Tahlequah in the presence of a joint session of the National Council.<sup>38</sup> At the time, Frank

Boudinot issued the statement:

"...we are opposed to the plan of Chief Rogers and his party to wind up tribal affairs and sell our property and surplus land until we know where we stand...There are hundreds of contests and controversies over citizenship matters that in our opinion should be cleared up before the final division of our property is made. We want as speedy a settlement of our tribal affairs as possible, but we want all elementary entanglements removed before this takes place."<sup>39</sup>

The Keetoowahs were especially angered on the issue of citizenship. They believed that no intermarried white person, wed after 1874, should be enrolled for allotment. The Traditionals claimed that an old Cherokee statute remained in force that gave white people who married into the tribe the right of citizenship, but not the right to share in allotments of lands or per capital payments.<sup>40</sup> Boudinot stated that Rogers was elected by the Downing Party on a platform that declared itself in favor of allotting Cherokee lands to all citizens, "red, white, or black." The Keetoowahs described their actions as:

"practically represent[ing] the last struggle of the full blood Cherokees for recognition upon the eve of the dissolution of their tribal government as opposed to the inter-married citizens and mixed blood Cherokees who are daily increasing in numbers, and whose forces will within a few years wipe the full blood Cherokees from the face of the earth by the fusion of the Caucasian blood which already predominates among the Cherokees."<sup>41</sup>

For its first matter of business, the newly elected "rogue" council put forth resolutions for impeaching W. C. Rogers. on November 19, 1905. The articles of impeachment against Rogers listed his offenses as:

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<sup>38</sup> Conley, *The Cherokee Nation*, 198.

<sup>39</sup> George Fields, Jr. to Thos. Ryan, February 9, 1906, Box 8, Cherokee Nation Correspondence, Dawes Commission Records, Research and Archives Division, Oklahoma Historical Society, Oklahoma History Center, Oklahoma City, Oklahoma [hereafter cited as CNC];

<sup>40</sup> Conley, *The Cherokee Nation*, 198.

<sup>41</sup> George Fields, Jr. to Thos. Ryan, February 9, 1906, Box 8, Cherokee Nation Correspondence, [CNC].

- Refusing to issue a proclamation calling for election of the National Council in August 1905, depriving the Cherokee people of the constitutional right to vote for and elect their representatives. As such, he was accused of "willful violation" of his oath of office. This refusal and neglect "was a willful attempt to suspend the laws of the Cherokee Nation relating to elections...thereby usurping the power of the National Council [in] which is vested the sole power of suspending any of the said laws of the Cherokee Nation..."
- He refused to attend the session of the newly elected National Council and to perform the duties of his office there.
- Rogers refused to recognize the National Council and "assumes to exercise all authority properly belonging to and vested in the National Council." In addition, Rogers' confession of consulting with "parties" who are named "amount[s] to a conspiracy to subvert the government of the Cherokee Nation and a combination to resist the enforcement of the laws thereof, and is a felony under Section 270, Article 1, Chapter 4 of the compiled laws of 1892. The council argued that Rogers was attempting to "concentrate all Cherokee national authority in himself. He is a dangerous man to retain in so high an office and his removal is necessary."<sup>42</sup>

Rogers refused to acknowledge the newly elected council while they were in session in Tahlequah. He argued that their election was not legal because there had to be an official call for an election issued ninety days prior by the principal chief, who appoints the election clerks. Afterwards, the chief had to approve the sworn returns from the various election precincts. The election was not called by Rogers, as he had refused to do so. The clerks were not appointed in the regular way, and there was no official count. Few people voted—in the Coowee-cowee district, only twelve votes were cast compared to the normal is nine thousand. The opposing

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<sup>42</sup> Clarence B. Douglas, editor. "Demand Rogers Be Put on Trial," *Muskogee Daily Phoenix* (Muskogee, Indian Territory), November 19, 1905. Folder 102, Box 2, William Charles Rogers Collection [WHC]. (This was the printing of the resolution put forth by the self elected council on November 17, 1905).

faction only secured about five hundred votes in the entire nation. Rogers utilized these statistics to show that the new council did not really represent the majority of the Cherokee Nation.<sup>43</sup>

In regards to the charges of impeachment, Rogers claimed that it was "causing him no concern." He stated the council could do nothing and "represented no one except a few discontented full-bloods belonging to the defeated party and urged on by designing lawyers who hope to influence the would be council to pass legislation giving them fees that they would not have been able to get approved by the legitimate council." Rogers declared that he did "not recognize these fellows as representatives of the nation in any sense and it [made] no difference to [him] what action they take."<sup>44</sup>

Yet, while stating the impeachment was causing him no concern, Rogers believed it important enough to reiterate his defense for not calling an election. He asserted that he allowed the old council to hold over and called the session two months early in order to get bills approved to enable their submission early in the next session of the US Congress. He said when the council was held in November, the bills usually are not sent to Washington, DC, until the middle of December. There they are first reviewed and passed upon by the Indian commissioner, after which they go to the Secretary of the Interior. After approval there, they go to the president. It is therefore late February before they are returned to the Cherokee Nation. This would be too late to

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<sup>43</sup> W. L. Wright, ed., "News Item of W. C. Rogers," *The Collinsville News* (Collinsville, Indian Territory), November 23, 1905. Box 104, Box 2, William Rogers Charles Collection [WHC]; D. B. Collins, ed., "Editorial on W. C. Rogers," *Stillwell Standard* (Stillwell, Indian Territory), November 23, 1905. Folder 103, Box 2, William Charles Rogers Collection [WHC]; Paul B. Smith, ed. "Impeachment of W. C. Rogers," *The Indian Citizen* (Atoka, Indian Territory), Folder 110, Box 2, William Charles Rogers Collection [WHC]; Myron Boyle, ed. "Editorial on W. C. Rogers," *Indian Republican* (Tulsa, Indian Territory), November 24, 1905. Folder 108, Box 2, William Charles Rogers Collection [WHC]; J. W. Quinn, ed. "Editorial on W. C. Rogers," *The Chelsea Commercial* (Chelsea, Indian Territory), November 17, 1905. Folder 95, Box 2, William Charles Rogers Collection [WHC].

<sup>44</sup> W. L. Wright, ed., "News Item of W. C. Rogers," *The Collinsville News* (Collinsville, Indian Territory), November 23, 1905. Box 104, Box 2, William Rogers Charles Collection [WHC]; J. W. Quinn, ed. "Editorial on W. C. Rogers," *The Chelsea Commercial* (Chelsea, Indian Territory), November 17, 1905. Folder 95, Box 2, William Charles Rogers Collection [WHC].

give the Cherokees an opportunity to secure beneficial legislation in Congress before the termination date of March 4, 1906.<sup>45</sup>

Rogers even went as far as writing a letter to the council while they were in session, despite refusing to acknowledge them. The correspondence repeated his justification for refusing to call an election based on the timing of getting bills to the US Congress. An election, he claimed, would have "been at a great expense to the Cherokee Nation when nothing whatsoever could be accomplished by holding an election" because all the business of the tribe had to be concluded before March. He also asserted that he "conferred with a very great many of our leading citizens who entertained the same views..." This last action was what the council considered his conspiracy against the Cherokee government mentioned in the articles of impeachment. Rogers concluded his letter by declaring he was "only addressing you as my fellow citizens, and in no use do I recognize you as legally elected members of a Cherokee National Council, nor do I recognize you as committees representing any branch of the National Council...."<sup>46</sup>

Secretary of the Interior E. A. Hitchcox refused to recognize the newly elected chief and reinstated Rogers. Boudinot stated for many years afterward, that, despite his lack of US recognition, he remained the representative of his people, Cherokees by blood. Boudinot continued working with the Keetoowahs and negotiating separately on behalf of Traditionals. In September 1905, an act of the Cherokee National Council reiterated their approval of the 1902 allotment agreement and since enrollment would not be finished by March 4, 1906, to extend

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<sup>45</sup> W. L. Wright, ed, "News Item of W. C. Rogers," *The Collinsville News* (Collinsville, Indian Territory), November 23, 1905. Box 104, Box 2, William Rogers Charles Collection [WHC]; J. W. Quinn, ed., "Editorial on W. C. Rogers," *The Chelsea Commercial* (Chelsea, Indian Territory), November 17, 1905. Folder 95, Box 2, William Charles Rogers Collection [WHC].

<sup>46</sup> "Letter of W. C. Rogers," *The Cherokee Advocate* (Tahlequah, Indian Territory), Folder 101, Box 2, William Charles Rogers Collection [WHC].



Rogers' term as principal chief. The US president disapproved of this tribal legislation March 7, 1906.<sup>47</sup>

After sending his letter to the self-elected council, Rogers traveled to Washington, DC, to meet with officials, offering to take the records of the impeachment proceedings with him to present to the Department of the Interior.<sup>48</sup> Boudinot and Richard Wolf also traveled to Washington, DC, to present their council's actions. In addition to the impeachment and electing Boudinot, the council also passed two appropriation bills and sought ratification from the Interior Department and president as required by the Curtis Act of all National Council actions. If Boudinot and Wolf were successful, they planned to call another session of the council and select a commission to be sent to Washington, DC, to carry out the final settlement of tribal affairs following the Keetoowah's demands regarding citizenship.<sup>49</sup>

Regardless of the issues within the Cherokee Nation, statehood was coming quickly for the Oklahoma and Indian territories. The "governors" of the Five Tribes met in Muskogee in early November 1907 to begin their travel to Washington, DC, for a last conference with the Secretary of the Interior in regards to Indian affairs and their cause. The delegates included W. C. Rogers for the Cherokee, John F. Brown, Motey Tiger, Green McCurtain, and Douglas H. Johnston. The conventions of tribes submitted their draft of a state constitution for Sequoyah to show the US the tribes were willing to accept statehood separate from Oklahoma.<sup>50</sup>

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<sup>47</sup> Frank J. Boudinot, interview by Jas S. Buchanan, volume 9, interview identification 5221, Indian Pioneer Papers [WHC]; First Assistant Secretary Through the Commission of Indian Affairs to the US Indian Inspector, March 9, 1906, Box 8 [CNC].

<sup>48</sup> "Impeachment of W. C. Rogers," *The Mannsville News* (Mannsville, Indian Territory), December 1, 1905. Folder 110, Box 2, William Charles Rogers Collection [WHC].

<sup>49</sup> Robert J. Conley, *A Cherokee Encyclopedia* (Albuquerque, New Mexico: University of New Mexico Press, 2007), 192; "Impeachment of W. C. Rogers, Nov. 24, Muskogee, Indian Territory," unidentified newspaper, Folder 127, Box 2, William Charles Rogers Collection [WHC].

<sup>50</sup> J. O. McMinn, "Editorial on Convention Call by W. C. Rogers," *The Francis Bulletin* (Francis, Indian Territory), September 1, 1905. Folder 2, Box 81, William Charles Rogers Collection [WHC]; Katherine Mae Rolison, "The Cherokee Nation from Indian Territory to Statehood and the Impact of Allotment: One Family's Story." Ph.D. diss., Arizona State University, 2004, 81; Jonita Mullins, "Sequoyah Convention

However, Congress passed an Enabling Act on June 16, 1906, combining Oklahoma and Indian Territories. The legislation ended hopes of a separate Indian state and gave the US authority to oversee the dissolution of the Five Tribes as sovereign nations. On November 16, 1907, President Theodore Roosevelt declared the combined territories the state of Oklahoma, which also made Cherokees citizens of the new state. Roosevelt commented that "The Cherokees are a bright and intelligent race, better fitted to follow the white man's road than any other Indians."<sup>51</sup> His statement accurately described the American attitude towards natives as well as the assimilation policy in regards to the Cherokee. With allotment and the end of tribal government, the US had done everything to force the indigenous to Americanize.

Not all of the Cherokee supported statehood as a way to remain independent as they would still be governed to a degree by the federal government rather than exist as a fully recognized sovereign nation or as individual tribes with a degree of self-determination. In 1906, the Keetoowahs met for four days near Tahlequah "with a decision to let the politics of the white man alone."<sup>52</sup> Orators at the meeting vehemently argued against even participating in the politics of the proposed new state of Sequoyah. One thousand "fullbloods" out of the three thousand attendees pledged not to vote at all regarding statehood. Redbird Smith stated that the Nighthawk Keetoowahs' former councils had decided to participate in neither selecting the delegates for the constitutional convention nor the choosing of state or county officers. Nighthawks were angry

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Opened 100 Years Ago to Deal with Issues of an Indian State," *Muskogee Phoenix* (Muskogee, Oklahoma), August 28, 2005 [JVL]; Clay Cross, ed. "Editorial on W. C. Rogers, et. al." *The Skiatook Sentinel* (Skiatook, Indian Territory), November 21, 1907. Folder 126, Box 2, William Charles Rogers Collection [WHC].

<sup>51</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood and the Impact of Allotment," 103; Jonita Mullins, "Sequoyah Convention Opened 100 Years Ago to Deal with Issues of an Indian State," *Muskogee Phoenix* (Muskogee, Oklahoma), August 28, 2005 [JVL]; Clay Cross, ed., "Editorial on W. C. Rogers, et. al." *The Skiatook Sentinel* (Skiatook, Indian Territory), November 21, 1907. Folder 126, Box 2, William Charles Rogers Collection [WHC].

<sup>52</sup> "Editorial on Keetoowahs," *The Claremore Progress* (Claremore, Indian Territory), September 1, 1906. Roll 50, Cherokee Nation Papers WHC.

because they felt ignored in the entire process and Smith asserted that "...we should not in any way be responsible for the inevitable wreck and ruin of our people."<sup>53</sup>

The Keetoowah and National Party were not the only tribe with members against dual statehood. Ridge Paschel and J. Henry Dick, delegates from the Tahlequah Single State Club, traveled to Washington, DC. Both representatives sought to combat the assertion of Creek Chief Pleasant Porter and other advocates that all natives supported the separate state of Sequoyah. They, like the other opponents, were unsuccessful.<sup>54</sup>

In the wake of allotment and then single statehood, many American Indians were reduced to the margins of society and suffered extreme poverty. Historian Erik Zissu observed that at this time Progressives acted for the benefit of their more traditional tribe members. They tried to prevent the further dislocation of their people. "Operating through the Indian bureau, they recognized an obligation to those tribal members less prepared for the challenges of life in Oklahoma."<sup>55</sup> The Progressives, through their literacy in English and experience in working and living amongst whites, maintained their wealth and political power after statehood. They adopted the same paternalistic view towards their traditional brethren that the US maintained towards all of the tribe. However, the Traditionals would not have agreed with this assertion, viewing the opposing faction as being only concerned with their own personal wealth.

During the final steps of allotment, tribal councils continued in a limited form to help settle business. The US officially declared the Cherokee government terminated on March 3, 1906. The citizenship rolls and assignments of homesteads ended in 1907. In November 1907, the *Weekly Times Journal* in Oklahoma City stated that "...the title 'Cherokee Nation' became

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<sup>53</sup> "A Resolution Passed by the Keetoowah Society," *Weleetka American* (Weleetka, Indian Territory), May 31, 1907. Roll 50, Cherokee Nation Papers [WHC].

<sup>54</sup> "Letter of H. B. Tuhee on W. C. Rogers, Sequoyah, T. M. Buffington, et. al.," *The Muskogee Democrat* (Muskogee, Indian Territory), December 7, 1905. Folder 112, Box 2, William Charles Rogers Collection [WHC].

<sup>55</sup> Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma* (Los Angeles: University of California Press, 2002), 6.

obsolete...."<sup>56</sup> Even with the dissolution of indigenous government, the US still needed a central figurehead for negotiations. The Act to Provide for the Final Disposition of the Five Civilized Tribes gave the Department of the Interior control over Indian schools, government buildings, and tribal funds. After the passing of Chief Rogers in 1917, US presidents appointed a succession of Cherokee men to serve as "chief for a day" whenever a legal document, such as a deed, needed signing. If a chief refused to sign, he could be removed or the document approved by the Secretary of the Interior. However, with the complicated nature of land transfers, the Cherokee government continued in an extremely limited form until June 30, 1914.<sup>57</sup>

The US deemed allotment completed in 1914, with private ownership the forced life of the Five Tribes, and the surplus land of 3,174,988 acres sold to white settlers. Congress abolished the Dawes Commission on August 1, 1914. The US transferred the commission's unfinished work to the Five Civilized Tribes Agency in Muskogee, Oklahoma, considering the Indian problem solved.<sup>58</sup>

The assimilation and allotment policies dramatically changed Cherokee life and tampered their self-determination, marking the end of native representation through tribal governments. Along with governments ceasing to exist, tribes had also lost jurisdiction over its citizens, including the right to even determine requirements for citizenship, and any/all financial resources. In addition, once the natives became US citizens, the tribal governments lost any remaining legal control.

The allotment policy proved a failure. For the most part, the policy did not assimilate natives into white mainstream society and only resulted in the further impoverishment of the

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<sup>56</sup> Cortez Brown, ed., "Editorial on Chiefs," *The Weekly Times Journal* (Oklahoma City, Oklahoma), November 29, 1907. Roll 50, Cherokee Nation Papers [WHC].

<sup>57</sup> Rolison, "The Cherokee Nation from Indian Territory to Statehood," 81-2; Denson, *Demanding the Cherokee Nation*, 198-201-3. It is around this time that sources for the Cherokee tribe and government cease other than letters and announcements published in local newspapers. Without an official government, no official recordkeeping existed.

<sup>58</sup> Denson, *Demanding the Cherokee Nation*, 213.

indigenous. US officials assigned individual allotments to turn natives into prospective yeoman farmers, a previous symbol of American individualism and success. This did not work because in the early twentieth century, with innovations in technology, individual farming could not compete with the commercial equivalent. In addition, the trades taught to native children in federal boarding schools were outdated. Once they graduated, the students realized that they could not use the skills they learned because with the rise of industrialization, no one used older methods of cobblers or blacksmithing. Eventually, the Meriam Report of 1928 exposed the assimilationist policies' failures and detriment to American Indians. It would take nearly another decade before the US government began to rectify their wrongs.

The Cherokee reacted to the abolition of their US-recognized government by lobbying for separate native statehood. While not in control of individual tribes, statehood would have retained state level self-determination and representation for American Indians, even with the dissolution of tribal governments. However, once the two territories merged and it became clear the goal of separate statehood would not be realized, many Cherokees (especially Rogers and Progressives) resigned themselves to accepting the assimilation policies. Traditionals saw this acquiescence as unhelpful to their determination to keep fighting against allotment and the dissolution of their tribal government. However, Rogers or one group of people were not blamed for assimilation policies and the hardships endured by the people as had been the case for the Treaty Party after they signed the Treaty of New Echota. The Traditionals simply viewed Rogers as an obstacle, especially after he refused to call an election and blocking the leadership of those who would have continued the fight for self-determination. As a result, Boudinot and his followers sought to remove their obstacle by impeaching Rogers. Ultimately this failed as the US refused to recognize Boudinot as chief.

Those fighting against assimilation showed a willingness to collaborate with other factions. Leading the effort, Frank J. Boudinot marked a shift in the new generation of leaders. A

descendant of Elias Boudinot, Stand Watie, and the Ridges in the Treaty Party who at times violently opposed Traditionals, Boudinot worked with any who shared the goal of opposing allotment. Boudinot and the new generation of leaders did not experience the same intratribal fighting or the hardships of the Trail of Tears, violence during the unification of the Cherokee in Indian Territory, or the fighting on opposing sides of the American Civil War. As a result, these new leaders were able to collaborate for a common goal for all of their people without the grudges and bitter feuds their predecessors had held. This served as the beginning indication of later cross-factional cooperation that occurred during the 1920s when those leaders were even further removed from violent internal opposition.

## CHAPTER V

### FINDING COMMON GROUND: GRASSROOT BEGINNINGS, 1906-1925

With the Curtis Act ending the tribal governments and the creation of the State of Oklahoma ending hopes of a separate Indian state, the Cherokees lacked any central institutional organization and self-determination. Without a tribal government to serve the people and with rampant poverty, the Cherokee focused on daily survival. Community-level organizations emerged to assist their people as unofficial governments. The Keetoowah continued to advocate for self-determination as well as filed for a corporate charter to at least be able to apply for financial aid for the tribe. As was beginning to become apparent in the previous decade, a new generation of leaders proved willing to cooperate. The 1920s marked a high point of intrafactional collaboration. With the high levels of poverty, landlessness, lack of central organization and representation, cooperation overruled previous differences and a common goal existed to care for all Cherokee people.

The period of disintegration after the dismantling of sovereign tribal governments was followed by "an innovative, multi-faceted campaign waged by diverse groups within the tribes to bring about agreement and unified action."<sup>1</sup> In grassroots movements, intratribal political conventions, and through various writings, natives acted to regain their autonomy and control

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<sup>1</sup> Erik M. Zissu, *Blood Matters: The Five Civilized Tribes and the Search for Unity in the Twentieth Century* (London: Routledge Press, 2001), 5.

over their own lives. Historian Erik Zissu argues that during this time the indigenous reclaimed using blood as a component of the notion of Indianness as a foundation for solidarity.

Chief William C. Rogers continued to sign land transfers after the dissolution of the nation. The last elected Cherokee chief until the late twentieth century, Rogers died in 1917 and the US did not appoint a chief again until 1919. With no central government, more Cherokees became easy prey for land speculators. Throughout the 1910s to 1920s, US presidents only appointed “chiefs for a day” when they needed something signed: A. B. Cunningham (1919), Ed M. Frye (1923), Richard B. Choate (1925), Charles J. Hunt (1928), Oliver P. Brewer (1931), and W. W. Hastings (1936). No official term of office existed, the US president simply appointed a new chief when a signature was needed.<sup>2</sup>

The Keetoowahs, mostly consisting of Traditionals, remained the most active in trying to reclaim self-determination, returning to living as their ancestors, and calling the nation together. In January 1900, the Keetoowah convened a convention at a place referred to as “Moody’s.” At this meeting, they called themselves the Cherokee Emigrant Council and appointed a committee of five “to let a contract for the collection of the money” still owed to the Cherokees on behalf of the Old Settler faction from the 1830s. Dave Muskrat headed the committee while Frank J. Boudinot functioned as his advisor and the group’s attorney. The Cherokee Emigrant Council approached Robert L. Owen, a prominent lawyer and lobbyist, and gave him the contract to retrieve the money. In 1905, the tribe received the 4 million dollars owed them. Without the Keetoowah, Boudinot, and Owen, the tribe would still not have received the money due them for land lost after removal in the 1830s.<sup>3</sup>

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<sup>2</sup> Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque, NM: University of New Mexico Press, 2007), 199, 203; Wilma Mankiller and Michael Wallis, *Mankiller: A Chief and Her People* (New York: St. Martin’s Press, 1993), 170-71.

<sup>3</sup> James W. Duncan, “The Keetoowah Society,” *The Chronicles of Oklahoma*, 4, No. 3 (September 1926), 252.



After the Cherokee agreed to allotment in 1902, the Keetoowah split on unfriendly terms until the 1920s. Before the 1902 act, they remained mostly united in their opposition to allotment. However, after the act many gave up the fight and sought to work politically to achieve the best deal possible for them. Around that time, Redbird Smith refused to acquiesce and with five thousand others withdrew from the Keetoowah to form the faction of the society called the Nighthawk Keetoowah, which some believed numbered around two hundred Cherokee out of a total of eight to ten thousand. Smith's organization not only focused on a religious revitalization, they also engaged in a campaign of resistance to enrollment for allotment. They evaded federal commissioners and returned unwanted land deeds unopened. It is often unclear after this point in records, both Anglo American and Cherokee, to which Keetoowah Society the sources refer to. When discussing "full bloods" that hid in the hills and were arrested in their avoidance of allotment, they are usually called "Nighthawks." When describing those who opposed allotment and strove to fight politically against the Cherokee Nation, refused to submit to US allotment legislation, and appealed to the federal government, they are described as simply "Keetoowah." This text follows these descriptions for the different factions. While the Nighthawks began to be identified as a separate movement due to their return to ceremonial practice, the politically-oriented members of the Keetoowah persisted as an organization as well. Today, the Cherokees themselves do not agree as to which faction did what, or deny a split even occurred, depending on the source's relation to the societies.<sup>4</sup>

The Cherokee Nation signed their formal agreement for allotment in 1902. At this time an elder Keetoowah stated during the enrollment process that they would retain their customs, land, and the Cherokee tribal government would not become extinct in 1906. About 1,400 to 2,000 Keetoowah began resistance to the making of citizenship rolls and receiving allotted land.

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<sup>4</sup> Duncan, "The Keetoowah Society," 251; Dr. Julia Coates, "The Allotment Era Keetoowah Societies," December 9, 2011, <http://freedmenvscherokeeanation.blogspot.com/2011/12/allotment-era-keetoowah-societies.html> (accessed March 31, 2013); Mankiller, *Mankiller*, 169; Untitled, *The Oklahoma State Capital* (Guthrie, Oklahoma Territory), November 24, 1903; Conley, *The Cherokee Nation*, 198.

In 1902, US Marshals scoured the territory and many of the Nighthawks and Keetoowah were arrested and brought before a US court on a charge of contempt for refusing to enroll. These prisoners still refused to enroll until the jailor threatened to cut their hair, which many indigenous saw as a spiritual portion of the body. This resulted in capitulation. Many found themselves and their children enrolled against their will. Several, including prominent Keetoowah Dave Muskrat and at a later time Nighthawk leader Redbird Smith, refused until the arrests began. Some believed Smith "sold out," but eventually the Dawes Commission enrolled full bloods by using the inaccurate 1896 Cherokee Census to assign land.<sup>5</sup>

In the 1890s through the first decade of the twentieth century, several reports connected Nighthawks to violence and the murder of "full bloods" that accepted allotment. Allegations accused them of not only threatening those in opposing factions, but also their own who defected. Some Progressives told the *Daily Ardmoreite* that the organization sought to murder their leaders who accepted the 1902 agreement beginning January 1903. The same men told a story of Nighthawks going to the home of Wolf Coon, a Traditional preacher, to kill him for accepting enrollment. They approached his door with rifles raised but found only his wife and fled into the hills. The men believed Wolf Coon was a target because he had denounced protestor Crazy Snake at a previous Nighthawk meeting. The killing of Peter Wolfe, a "full blood" who had been shot and killed in an ambush in the Saline District was also attributed to the organization. Another native was found dead on a public highway after having been threatened days before if he allotted. Thomas J. Madden was killed by Moses Miller after receiving anonymous notes

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<sup>5</sup> Untitled, *The Oklahoma State Capital* (Guthrie, Oklahoma Territory), November 24, 1903; C. R. Breckinridge, Indian Commissioner in Charge to Secretary of the Interior, March 19, 1904, Box 9, Cherokee Nation Correspondence, July 1, 1903 to July 27, 1903, Box 8, Cherokee Nation Correspondence, Dawes Commission Records, Research and Archives Division, Oklahoma Historical Society, Oklahoma History Center, Oklahoma City, Oklahoma [hereafter cited as CNC]; "To Blame Government. Cherokees Have Refused to Enroll from Principle," *The Oklahoma State Capital* (Guthrie, Oklahoma Territory), September 4, 1901; J. C. Starr, interview by James R. Carselowey, "The Keetoowah's Work of Organization," volume 103, interview identification 1238, December 14, 1937, J. C. Starr Papers, Western History Collections, University of Oklahoma, Norman, Oklahoma [hereafter cited as WHC]; "The Keetoowah Society Organized Among the Indians," *Tahlequah Arrow* (Tahlequah, Indian Territory), June 28, 1903.

decreeing his death by the Nighthawks. Judge William Gill of Indian Territory issued an order directing US Marshals to prevent an uprising of the "full bloods." Upon hearing that the Traditionals were dancing in the Spavinaw Hills and intimidating others from accepting allotments, he gave roving deputies permission to hold court anywhere at any time necessary. *The Weekly Examiner* newspaper disputed the reports of Nighthawk violence. Other reports described peaceful ways the organization persuaded members to refuse enrollment, such as meetings with elders every two weeks. While the truth may never be known, a news report did cover the story of Jack Downing, a "full blood," who pled guilty in October 1904 for the murder of a Nighthawk because he appeared before the Dawes Commission and filed for allotment.<sup>6</sup>

At this time, the Traditionals enrolled but typically only if threatened by arrest. Keetoowah attorney Frank J. Boudinot stated that the "full bloods" (probably the Keetoowah instead of the Nighthawks) accepted division of their lands and the final adjustment of their affairs, but wanted the US government to carry it out because the Cherokees could not agree among themselves. They wished the US "to be responsible for the consequences."<sup>7</sup> In 1902, the Keetoowah presented a petition requesting the US delay forcing enrollment on the Cherokees as well as their reasons for rejecting allotment. Six of the fifteen prominent members of the society presented their request to the Dawes Commission, with Daniel Redbird serving as head captain and Dave Muskrat as co-head captain. They stated as one reason that the destitution of their people required that they "divide with one another in order to avoid actual starvation," meaning that ending communal living further hindered the already suffering people. The Traditionals also did not want to treat regarding land as "the painful fact that the US has failed to comply with

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<sup>6</sup> Untitled, *Weekly Examiner* (Bartlesville, OK), 1903; "Suppress the Fakes," *Weekly Examiner* (Bartlesville, OK), February 6, 1904; "Jack Downing Pleads Guilty," *Tahlequah Arrow* (Tahlequah, Indian Territory), October 15, 1904.

<sup>7</sup> "To Blame Government. Cherokees Have Refused to Enroll from Principle," *The Oklahoma State Capital* (Guthrie, Oklahoma Territory), September 4, 1901.

most of the important pledges made to our people.”<sup>8</sup> The Keetoowah reiterated that they opposed the division of tribal resources amongst intermarried Anglo Americans and freedmen who they did not see as Cherokee. The petition concluded with the point that they recognized the sovereign power of the US and just hoped to work in harmony with them. The US refused, stating the Keetoowah made up such a small number of the total Cherokee so they did not represent the people.<sup>9</sup>

With the Curtis Act ending the government of the Cherokee Nation in 1906, the Keetoowah sought to serve as a representative of their people by forming a corporation. The band would shift its sole purpose from a religious band to a political body to continue leading their people through this difficult time. Through incorporation as a business, they could further be able to take the place of the defunct Cherokee Nation government. As a corporation, they could at least attempt to handle the financial affairs of their people. A leader of the Keetoowah since 1887, Rabbit Bunch urged their council, along with the remnants of the National Party, to select a "mixed blood" still loyal to traditional ways but more versed in the English language and Anglo ways to help the people in the difficult time. The Keetoowah selected Richard M. Wolfe as head captain and Dave Muskrat as co-captain, with Boudinot as the English secretary. To continue the Cherokee tribal government without as much US interference, Wolfe petitioned the Territorial Court in Tahlequah on September 1905 and received a corporate charter for his people, now called by its legal name, the Keetoowah Society, Incorporated. Displeased with the Act of Union that brought the Old Settlers, Ross followers, and Treaty Party together, the Keetoowah had long wanted separate tribal status for Traditionals. By incorporating, the Keetoowah Society organized

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<sup>8</sup> “Tell of Want, Kee-Too-Wah Leaders Point to Destitution as One Reason for Non-Enrollment,” *The Indian Chieftain* (Vinita, Indian Territory), February 27, 1902.

<sup>9</sup> C. F. Larrabee, Acting Commissioner of Indian Affairs to Secretary of Interior, November 2, 1905, Box 8, [CNC]; “Tell of Want, Kee-Too-Wah Leaders Point to Destitution as One Reason for Non-Enrollment,” *The Indian Chieftain* (Vinita, Indian Territory), February 27, 1902; C. F. Larrabee, Acting Commissioner of Indian Affairs to Secretary of Interior, November 2, 1905, Box 8 [CNC].

as a political entity and continued to function under the original Keetoowah constitution of 1859.<sup>10</sup>

The Keetoowah had first petitioned the US government regarding headship of the tribe when they opposed the 1902 allotment act, based on its provisions for Cherokee leadership. They alleged that it extended the authority of the officers of the Cherokee Nation beyond the life of the tribal government, which conflicted with both the laws of Congress and the Cherokees. These provisions meant that those already in power would remain longer than allowed by tribal law. Without a National Council to maintain accountability, the situation paved the way for corruption and a dictatorship without a limit of power. The Keetoowah argued the 1902 act entailed unnecessary cost on the nation of \$36,865 per year to pay these officers whose terms had no noted limit, resulting in a “salary grab.” The Keetoowah stated if the tribal government in whatever capacity was to be extended past March 4, 1906, it could only be done by Congressional legislation. The National Council of the Cherokee Nation had no power to extend the tribal government beyond that date as it no longer legally functioned, except in administrative duties relating to allotment deeds. Lastly, the Keetoowah argued that the National Council never had power to dispose of surplus lands because that authority ceased “the moment said lands were dedicated by act of Congress to per capita distribution among the people.” By ending the constitutional Cherokee government, the title reverted back to the people, who must be consulted

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<sup>10</sup> Richard M. Wolfe, Dave Muskrat, Keetoowah petition to Secretary of the Interior, October 2, 1905, Box 8, [CNC]; Letter from Acting Secretary of the Interior to Henry M. Jackson, Chairman of the Committee of Indian Affairs, undated, Folder 88, Box 5, W. G. Stigler Collection, Carl Albert Congressional Research and Studies Center, Monnet Hall, University of Oklahoma, Norman, Oklahoma [hereafter cited as WGS]; Letter from W. N. Maben on behalf of the Keetoowah Society, Inc. to W. D. Roberts and the Department of the Interior, May 6, 1946. Folder 73, Box 11, Elmer Thomas Collection, Carl Albert Congressional Research and Studies Center, Monnet Hall, University of Oklahoma, Norman, Oklahoma [hereafter cited as ET]; Chief George Wickliffe, “A Word to the UKB People,” *Keetoowah Cherokee News*, August 2008, <http://www.ukb-nsn.gov/documents/08-08.pdf> (accessed April 2, 2013); “Keetoowah,” *Cherokee Observer*, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017); Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York City, NY: Peter Land, 1996), 10; Allogan Slagle, “Cherokee: United Keetoowah Band,” in *Native America in the Twentieth Century*, by Mary B. Davis, ed. (Garland, NY: Garland Publishing, 1996); J. B. Thoburn and Muriel H. Wright, *Oklahoma: A History of the State and Its People* (New York, 1929). Roll 50, Cherokee Nation Papers [WHC].

about the disposition of the excess, not the defunct Cherokee Nation. Again, US officials paid no attention to what they perceived as a backward minority.<sup>11</sup>

On April 26, 1906, Congress passed the Five Tribes Act to continue “in full force and effect” the governments of those tribes until the conclusion of allotment. Had Congress terminated tribal governments before the process was completed, the US would have had to negotiate with tens of thousands of individuals to finish allotment and assume mineral leasing rights. Still continuing the struggle for self-determination, in 1906 the Keetoowah Society, along with the other Five Tribes and the Osage, put its energy into the State of Sequoyah, a separate American Indian state. That movement failed when President Theodore Roosevelt signed the document making Oklahoma a state on November 16, 1907. Many Progressive Cherokee politicians became prominent state officials in the new state of Oklahoma.<sup>12</sup>

In addition, the Keetoowah sued in the US Court of Claims on behalf of all Cherokee people to restrict intermarried persons, unborn children, and freedmen until the US Supreme Court deemed the Court of Claims ineffective. While unsuccessful, some cases made it to the Supreme Court which some contend served as the foundation for modern lawsuit for the tribe. From 1910-1911, they called for a formal investigation and charges against Cherokee Nation attorney W. W. Hastings. The US Interior Department dismissed the allegations of wrongdoing by Hastings, not even requiring a statement from the accused. Throughout this time, Boudinot

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<sup>11</sup> Richard M. Wolfe, Dave Muskrat, Keetoowah petition to Secretary of the Interior, October 2, 1905, Box 8, [CNC]; Chief George Wickliffe, “A Word to the UKB People,” *Keetoowah Cherokee News*, August 2008; Frank J. Boudinot, interview by Jas S. Buchanan, volume 9, interview identification 5221, Indian Pioneer Papers [WHC].

<sup>12</sup> Duncan, “The Keetoowah Society,” 252-3; Chief George Wickliffe, “A Word to the UKB People,” *Keetoowah Cherokee News*, August 2008; Coates, “The Allotment Era Keetoowah Societies”; *Daniel Redbird v. United States*, 203 U.S. 76 (1906); Levi Gritts, interview by Grant Foreman, date unknown, presented to Oklahoma Historical Society February 18, 1952, Box 8 [CNC]; “Opinion of Mr. Justice Stafford, of the Supreme Court of the District of Columbia Sustaining the Constitutionality of the Act of April 26, 1906, authorizing the Enrollment of Minor Cherokee Children,” Cherokee booklets, Box 8, [CNC]; Cherokee National Council Bill No. 12, allotment act, circa 1900s, Cherokee National Council, Tahlequah, Indian Territory, Box 3 [CNC]; Frank J. Boudinot, interview by Jas S. Buchanan, volume 9, interview identification 5221, Indian Pioneer Papers [WHC]; Conley, *The Cherokee Nation*, 202.

remained in Washington, DC, under the authority of the Keetoowah to labor towards getting a general jurisdictional act and to secure permission from Congress for the Cherokee to sue in the US Court of Claims.<sup>13</sup>

Despite the progress of obtaining a charter to serve as leaders of their people, the Keetoowah splintered in the early-twentieth century. An exact account of how many groups existed is unknown as the few existing accounts are contradicting and vague. Some accounts put the number in the twenties, while others cite lesser numbers. Historian and author on the United Keetoowah Band (UKB) Georgia Rae Leeds based her numbers on an account of anthropologist Charles Wisdom and his undated work of "The Keetoowah Society of Cherokee" in the Chief John Ross papers in Claremore, Oklahoma. However, the opinion of the legal counsel for disputes between the Cherokee Nation against the Keetoowah in 2014 argued that Wilson provided a false account of Keetoowah history and serves as the reason for the unfair treatment of the Traditional faction in the 1930s when they were initially denied permission to organize under the Oklahoma Indian Welfare Act.

Redbird Smith and his Nighthawks withdrew from the Keetoowah Society. He built the first Nighthawk ceremonial ground in the summer of 1902 near his home in Gore, Indian Territory. This ceremonial fire (the center of their meeting place) was to serve as the principal fire of all other Keetoowahs affiliated with the Nighthawks. In 1905, twenty-three fires met together.

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<sup>13</sup> Duncan, "The Keetoowah Society," 252-3; Chief George Wickliffe, "A Word to the UKB People," *Keetoowah Cherokee News*; Coates, "The Allotment Era Keetoowah Societies"; *Daniel Redbird v. United States*, 203 U.S. 76 (1906); Levi Gritts, interview by Grant Foreman, date unknown, presented to Oklahoma Historical Society February 18, 1952, Box 8 [CNC]; "Opinion of Mr. Justice Stafford, of the Supreme Court of the District of Columbia Sustaining the Constitutionality of the Act of April 26, 1906, authorizing the Enrollment of Minor Cherokee Children," Cherokee booklets, Box 8 [CNC]; Cherokee National Council Bill No. 12, allotment act, circa 1900s, Cherokee National Council, Tahlequah, Indian Territory, Box 3 [CNC]; Frank J. Boudinot, interview by Jas S. Buchanan, volume 9, interview identification 5221, Indian Pioneer Papers [WHC]; Conley, *The Cherokee Nation*, 202; J. W. Fleming, "Attorney for the Cherokee Nation Exonerated, Hon. W. W. Hastings Not Required to Even File an Answer to Charges Made Before the Department of the Interior," *Tahlequah Arrow* (Tahlequah, Indian Territory), January 26, 1911; "Keetoowah History," United Keetoowah Band of Cherokee Indians, [www.ukb-nsn.gov](http://www.ukb-nsn.gov) (accessed March 1, 2013).

In 1908, the Nighthawk Keetoowah Council elevated Redbird Smith's position of chairman to chief. Its membership unanimously elected him to serve for life, which he did until his death on November 8, 1918.<sup>14</sup>

Smith's faction sought not only to return to their traditional religion and cultural practices, they also sought to repudiate the teachings of the first Anglo missionaries. Nighthawks claimed in 1914 that their medicine men discovered their organization was completely a religious institution. In their constitution, they declared they would be the only Keetoowah religion, and any person who joined another religion or society would forfeit membership. This marked a more radical turn from the previous policy of allowing concurrent membership in various factions. This led to further conflict with the Keetoowah Society, Incorporated, which also considered themselves the original "Keetoowah" organization. By the 1920s, Smith had rejuvenated the old religion among his group. The Nighthawks blamed the Anglo missionaries for leading them astray, arguing it "was the way of the white man and Christianity they taught [that was] responsible for the break in the Society."<sup>15</sup>

In the 1910s, newspapers reported Smith and his Nighthawks had traveled to Mexico with a document dating from 1820, hoping to prove a claim to land under the Mexican government, but nothing became of it. In 1914 the Nighthawks appealed to President Woodrow Wilson for their own reservation. Wilson rejected it, calling it a "backward step" from civilization. In 1921 about one hundred people left their homes in Mayes and Delaware counties to locate together in the extreme southeastern corner of Cherokee country. This community flourished for a few years and then faded away.<sup>16</sup>

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<sup>14</sup>"Keetoowah History," United Keetoowah Band of Cherokee Indians, [www.ukb-nsn.gov](http://www.ukb-nsn.gov) (accessed March 1, 2013); Leeds, *United Keetoowah Band of Cherokee Indians*, 5, 9.

<sup>15</sup> Leeds, *United Keetoowah Band of Cherokee Indians*, 12.

<sup>16</sup> Dr. Julia Coates, "Keetoowahs and Cherokee Nation Enter Contested Waters," December 12, 2011; Leeds, *United Keetoowah Band of Cherokee Indians in Oklahoma*, 9.



Up to 1914, Redbird Smith's authority declined, as many Keetoowah suspected he had sold out to the Americans. Smith had accepted his allotment and even sold some of the acreage of one minor son to finance home improvements. As a result of Smith's fading influence, branches of Keetoowah organizations sprang up in nearly every Traditional communities. The Nighthawks continued as more of a religious and ceremonial organization, boasting a membership of seven thousand people with meetings in Gore, Oklahoma. Some reported that Smith, in his last years of life, became obsessed with building a spirit of cooperation amongst all the Cherokee people, even stating those of mixed ancestry should not be overlooked. At the time of Smith's death in 1919, twenty-two separate Keetoowah organizations functioned independently. Surviving sources do not record the names of each of the groups nor if they had any conflict with the others or just existed separately due to proximity. Each had its own political agenda and continued to practice traditional ceremonies. In addition, brutal rivalries developed between Smith's older sons, with each attempting to take charge of the Keetoowah Society and accusing the others of various wrongs. The youngest son, Stoke Smith, took charge of the Keetoowah Society, the mother of all the other branches of various organizations.<sup>17</sup>

Georgia Rae Leeds chronicles the separation and creation of six different Keetoowah factions by the 1920s. Eli Pumpkin formed the Seven Clans Society, located near Chewie, after he and his followers argued they did not have equal representation in Gore. Ned Blackfox, a Nighthawk who joined Redbird Smith originally withdrawing from the Keetoowah Society, left Gore because of dissatisfaction with Smith's promises to regain the Cherokee government and resist US federal Indian policy. Blackfox and his followers joined the Cherokee Emigrant Indians, an ultra conservative group. Organized by Joe Fox and Coming Snell in 1907, the Cherokee Emigrant Indians claimed to be the original Chief John Ross faction and stated the other

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<sup>17</sup> Dr. Julia Coates, "Keetoowahs and Cherokee Nation Enter Contested Waters," December 12, 2011; Conley, *The Cherokee Nation*, 203; Mankiller, *Mankiller*, 169-170; "Keetoowah," *Cherokee Observer*, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017).

Keetoowah factions had abandoned the principles of Ross. The group elected Blackfox as their chief in 1927.<sup>18</sup>

In addition, some Traditional leaders such as Ned Blackfox, James Hilderbrand, and Eli Pumpkin broke away from the Keetoowah Society, Inc. and organized their own societies. Names such as the Eastern and Western Cherokee Keetoowah began to appear (both of which continued to avoid allotment). These groups operated independently in their attempts to continue to avoid allotments, restore the old order of Traditional leadership, enforce treaties, or gain protection for Traditionals who had accepted their allotments. James Hilderbrand, Dick Pickup, and Ned Blackfox created and led a group that functioned under the title of Keetoowah Society and relied heavily upon the 1905 charter of incorporation even though the Keetoowah Society proper continued as a non-political spiritual society in Sequoyah County, with Stoke Smith as its chief.<sup>19</sup>

Groups outside of the Keetoowah also formed to serve the people. The Cherokee Executive Council, Eastern and Western Cherokee, Tulsa Contingent, and the Cherokee Executive Committee functioned as businesses, similar to the Keetoowah Society, Incorporated to provide financial aid for their people. With the level of poverty caused by allotment, limited opportunities, and later the Great Depression, the Cherokees (and other natives) focus on daily survival. This explains the importance and prominence of these groups functioning as businesses and focusing on funds owed from the US.

Separate from the Keetoowahs, the Cherokee Executive Council was appointed by Principal Chief William C. Rogers (the last recognized elected chief, now appointed by US). However, the US did not authorize this council. Rogers created this body under the authority of a resolution passed by a convention of the Cherokee people held on October 22, 1916. According

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<sup>18</sup> Leeds, *United Keetoowah Band of Cherokee Indians in Oklahoma*, 9.

<sup>19</sup> "Keetoowah," *Cherokee Observer*, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017); "United Keetoowah Band of Cherokee Indians in Oklahoma," AAA Native Arts.com, <https://www.aaanativearts.com/us-tribes-t-to-v/united-keetoowah-band-of-cherokee-indians-in-oklahoma> (accessed January 2, 2017).

the secretary James W. Duncan, the Eastern and Western Cherokee councils, the Tulsa Contingent, and the Cherokee Executive Committee (mostly consisted of Progressives) worked together under the name of the Cherokee Executive Council. Duncan described each of the four groups as business organizations that united for the purpose of transacting the business of the Cherokee Nation. Separate groups such as these began to work together for the benefit of all their people, realizing any progress could only be accomplished through cooperation. In other words, these groups needed each other to achieve any gains of self-determination.<sup>20</sup>

Towards the end of his life, Redbird Smith advocated the joining of all Cherokees together, even Progressives. Sources do not definitively state the reason for Smith's change from strictly Traditional involvement only to including all of Cherokee society. However, Smith lived long enough to see the dissolution of the tribal government, the enforcement of allotment, the rampant poverty resulting from assimilationist policies, and the splitting of factions even further. Smith, and eventually other Traditionals, saw the consequence of a divided people having less of a voice in regards to what happens to them. In the early twentieth century, the many groups of Cherokees began to come together to work for the good of the tribe starting with local, grassroots movements. This began with the Keetoowah groups, who changed from celebrating only Traditionals to unifying all of the tribe under the shared identity of Cherokee Indian. The other factions that existed previous to 1906 functioned mostly as political parties and faded away as a lack of tribal government provided no base for influence politicking. The Keetoowahs continued, albeit in small, scattered communities, as religious and cultural groups. The presence of a governing institution did not affect the practicing of traditions, and as a result they remained more cohesive and organized, and the most able to unify the people to work towards a greater autonomy.

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<sup>20</sup> Resolution of the Cherokee Executive Committee, January 31, 1921. S. R. Lewis Documents, Indian Pioneer Papers [WHC]; Duncan, "The Keetoowah Society," 253-54.

In 1919, at the time of Redbird Smith's death, several separate Keetoowah organizations existed. Based on the work of US anthropologist Dr. Charles Wilson (whom she later called inaccurate), historian Georgia Rae Leeds argued only six existed: Seven Clans Society, Cherokee Emigrant Indians, Medicine Society, Cherokee Immigrant Indians, Nighthawks, and the Keetoowah Society, Incorporated. Other sources, such as the *Cherokee Observer* newspaper, name twenty-two Keetoowah organizations, each functioning separately. As these bands did not have official institutions or documentation, an exact number cannot be obtained. The varying numbers could be due to misremembering or the lack of a definition for a group or "faction." Some counted all religious groups who met with likeminded people and lived nearby as individual groups. This explains the higher numbers. The number of individual factions for the time period is also difficult, as newspapers mostly utilized the term "Keetoowah" for all Traditional Cherokees, only occasionally distinguishing the Nighthawks.<sup>21</sup>

Even without knowing the exact number, the amount of various factions that split from the Keetoowahs in the early nineteenth century was high. These splits occurred as a result of differing reactions to the lack of recognition of a tribal government. Some of the more politically minded would have seen no point to continue within their form of political party if they had no method to be heard and represented. The Nighthawks went even further, completely withdrawing from politics and non-native society to return to a solely religious organization, living among each other in the rural hills of Oklahoma. On the other side, other groups, such as the Keetoowah Society, Incorporated, refused to capitulate and strove to carry on as usual as a quasi-government to continue laboring for their people. Within this group, further splits occurred over disagreements of methodology.

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<sup>21</sup>"Keetoowah," *Cherokee Observer*, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017); Leeds, *United Keetoowah Band of Cherokee Indians*, 13.

However, a new generation of leaders, as well as dire circumstances, led to the unification of the various groups. This new generation shared the experiences of allotment and the dissolution of their government. Due to the consequences of allotment, they had cared for their elders and other family members who were landless and hungry. These leaders worked to continue as de facto governments for their communities. They lacked their ancestors' experiences of violent intratribal conflict and feelings of betrayal, which enabled them to be more willing to bridge factional lives, put aside any ideological differences of maintaining self-determination, and better the lives of them and their people. Interestingly, the group that initiated this unity had been the first to withdraw from the rest, become apolitical, and focus solely on religion and traditional living.

In 1920, Stoke Smith, son of Redbird Smith and the new Nighthawk chief, unhappy with the lack of unity among the Keetoowah, sought to join them all together. To consolidate his authority over all other Keetoowah branches, Smith visited each community and ceremonially killed their fires and brought them home to the new, central mother ground near his own home. The leaders of the other Keetoowah branches were not all willing to follow Smith. Many citizens continued to follow the old dethroned chiefs of these fires, some continued to lead their people for several more years, acting as mayors of their communities. Once the Keetoowahs united themselves, they set out to bring together the rest of the Cherokee.<sup>22</sup>

On November 10, 1920, the Nighthawks called a meeting, referred to as the Illinois Fire, of all Keetoowah to unify themselves and later the rest of the tribe for "the prosecution of various interests and claims against the United States." The Nighthawks that they themselves and organized group of "full blood" Cherokees had always adhered to ancient traditions, customs, and practices of their preremoval ancestors. They stated that Traditionals remained handicapped by

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<sup>22</sup>"Keetoowah," *Cherokee Observer*, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017).

their lack of literacy in English and lack of experience in Anglo American business and politics. Their people "were wholly unadapted and unprepared to assume the role of quick and radical changes brought by the obtaining of the Curtis Act."<sup>23</sup> The invasion of white settlers, living in close contact with non-Indians, and the participation of young Progressives in American government brought all factions together and showed the need for a single Cherokee chief again. They claimed their actions were nonpolitical and that they "invited into its membership Cherokees of either of the old political parties and whether Democrat or Republican."<sup>24</sup>

The Nighthawks argued further for the need of a single chief since the restrictions on the land of "full bloods" would terminate soon. In addition, they preferred to have a chief chosen by the people rather than one chosen by the US. In regards to the land titles of allotments, the US divided the Cherokees into various classifications, mostly based on blood quantum. "Full bloods" and others seen as "incompetent" had their titles held in trust by the federal government for a specified time period, free from taxes and unable to be sold or leased to enable the natives to establish a farm (land held in trust by the government was also called "restricted"). Consisting of mostly non-English speaking Traditionals, they conducted business through a chief and would be wholly unprepared to navigate through the Anglo business world and resist being swindled and losing their allotments. A chief would serve as a buffer between them, the white settlers, the federal government, and the tribe. The Nighthawks stated a new "psychological angle" existed in relations between the US and American Indians. Natives were part of the "body politic of a great commonwealth, and not an isolated and segregated Indian problem."<sup>25</sup>

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<sup>23</sup> Proclamation of the Illinois Fire, November 10, 1920. S. R. Lewis documents, Indian Pioneer Papers [WHC].

<sup>24</sup> Duncan, "The Keetoowah Society," 251; Proclamation of the Illinois Fire, November 10, 1920. S. R. Lewis documents, Indian Pioneer Papers [WHC].

<sup>25</sup> Proclamation of the Illinois Fire, November 10, 1920. S. R. Lewis documents, Indian Pioneer Papers [WHC]; Leeds, *United Keetoowah Band of Oklahoma*, 13.

The willingness of the Nighthawks to unify marks a shift in their previous proclaimed goal of existing separately from other Cherokee as an apolitical religious organization. This change in practice occurred for a number of reasons, including implementation of the allotment policy as well as a new generation of leadership. Discussed in greater detail by Angie Debo's *And Still the Waters Run*, numerous indigenous found themselves even further impoverished and newly landless after they received their allotments. For many Traditionals who had no previous experience with white American business or law, and also did not have adequate legal assistance, they were swindled into signing confusing documents that sold their land to settlers for a low value. With the Nighthawks consisting of mostly Traditionals, they would have witnessed several of these occurrences and, as they pointed out, with no experience in white business and law they had no way to help their brethren or prevent further events.

In addition to preventing further land loss, the Nighthawks' leadership also shifted from the elders to a new generation. These new leaders, such as Redbird Smith's son Sam Smith, were raised in their traditional heritage but also saw firsthand the importance of US Indian policy and a need for the ability to navigate within the Anglo American world. Some would have been forced to go to US Indian boarding schools, interacting with and learning non-traditional trades. Others also had different experiences from serving in World War I. This next generation often housed and fed older relatives who lost their allotments. They saw the value of working together as a stronger front, as well as utilizing the various talents of all the factions to work towards a better future for all of the Cherokee.<sup>26</sup>

At the time of the Illinois Fire, Sam Smith was the chief of the Nighthawks and William Rogers served as assistant chief. As its main order of business, the Nighthawks nominated Levi Gritts for chief as he understood the life of a Traditional and spoke Cherokee, but also earned an

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<sup>26</sup> For further reading on loss of allotments and relatives caring for their landless elders, see Rose Stremlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill, NC: University of North Carolina Press, 2011).

Anglo American education and spoke English. The Nighthawks requested "that the various organized groups, bands, or clubs of the Cherokee people take action...and confirm [sic] a chief for the said Cherokee people."<sup>27</sup> In nominating a principal chief, the Cherokee hoped to regain the rights of their tribe to "self-determination in their National Government affairs" since the US government had deliberately repudiated all treaty obligations. The Nighthawks acknowledged the role of factionalism in hindering self government, stating that

"this unfortunate position was perpetuated and created by the fact that the Cherokee people...became factionalized and bitterly antagonistic towards one another, rendering impossible a united Cherokee effort for mutual benefit."<sup>28</sup>

The other four groups that made up the Cherokee Executive Committee also wanted to work together as one body and agreed to elect a central chief. The Cherokee Executive Committee also approved of Levi Gritts for chief. They viewed him as "well qualified and competent" and believed he would be successful in listening to the needs of the Traditionals as well as navigating in the Anglo American world.<sup>29</sup>

On January 17, 1921, Price Cochran, the head of the Keetoowah Society, Incorporated, called for a meeting of a "representative delegation of enrolled Cherokees."<sup>30</sup> All of the communities gathered in Tahlequah, led by Isaac Greece, the second vice chief of the Keetoowah Society regarding working together. In 1925, the Nighthawks and Keetwoowah Society, Incorporated held a convention in Tahlequah to further discuss unification under a single chief. Apart from the very Nighthawks who wished to remain a religious organization but still willing to

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<sup>27</sup> Resolution of the Cherokee Executive Committee, January 31, 1921. S. R. Lewis documents, Indian Pioneer Papers [WHC].

<sup>28</sup> Proclamation of the Illinois Fire, November 10, 1920. S. R. Lewis documents, Indian Pioneer Papers [WHC]; Duncan, "The Keetoowah Society," 253.

<sup>29</sup> Surprisingly little can be found on Levi Gritts. Articles, such as those written for Samuel Mayes and other Cherokee leaders are not present for Gritts. Duncan, "The Keetoowah Society," 254; Resolution of the Cherokee Executive Committee, January 31, 1921. S. R. Lewis documents, Indian Pioneer Papers [WHC].

<sup>30</sup> Minutes of the Keetoowah Society Incorporated Meeting, January 31, 1921, Tahlequah, Oklahoma S. R. Lewis documents, Indian Pioneer Papers [WHC].



work together, the Keetoowah Society unified all of the other Traditional factions. These unified Keetoowahs met with the other Cherokee groups that consisted of the Cherokee Executive Committee (including representatives from four Cherokee groups) and Eastern and Western Cherokee Council. They agreed to work together and again all the societies voted to confirm Gritts as their leader. Although Gritts was not appointed or recognized by the US, the Cherokee viewed him as their true leader. Despite the US laws, the tribe saw no need for the presidential appointment of a chief. The tribe retained the Cherokee Executive Council to carry out the business of their nation throughout the 1920s and 1930s. They continued to conduct meetings and pursue claims against the US. This council served as a business entity to assist their people financially rather than as a governmental institution.<sup>31</sup>

In addition to electing and confirming Gritts as chief, the 1925 convention also created the Cherokee Representative Committee. The attendees elected Gritts as chairman, Fred McDaniel as secretary, John Redbird Smith as vice chairman, and William Rogers and Dan R. Coody as members. The Cherokee Representative Committee was authorized to hire attorneys to validate petitions that served as requests from the tribe and file suit in the US Court of Claims on the behalf of Cherokees. Even though each separate faction maintained their own leaders and political and religious beliefs, they formed these coalition groups to work for the good of the entire tribe. They discovered they could maintain their various groups and differences in opinion while working together for all Cherokee people in attempts to alleviate poverty, improve healthcare, and educational opportunities.<sup>32</sup>

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<sup>31</sup> Minutes of the Keetoowah Society Incorporated Meeting, January 31, 1921, Tahlequah, Oklahoma. S. R. Lewis documents, Indian Pioneer Papers [WHC]; Resolution of the Cherokee Executive Committee, January 31, 1921. S. R. Lewis documents, Indian Pioneer Papers [WHC]; Conley, *The Cherokee Nation*, 204; Mankiller, *Mankiller*, 171; "Keetoowah History," United Keetoowah Band of Cherokee Indians, [www.ukb-nsn.gov](http://www.ukb-nsn.gov) (accessed March 1, 2013); Duncan, "The Keetoowah Society," 53-54.

<sup>32</sup> Leeds cites the Cherokee Representative Committee was created in accordance with the Cherokee Jurisdiction Act of 1924 but no such legislation has been found. Leeds, *The United Keetoowah Band of Cherokee Indians*, 13.

Despite this organization and their actions to regain sovereignty, the US refused to recognize them and only communicated with the presidentially appointed chief, W. W. Keeler, the CEO of Phillips Petroleum Company and a Progressive Cherokee. However, Keeler reportedly told Gritts that perhaps the Keetoowah were the proper ones to help the Cherokees. Supposedly he also said the Cherokee Executive Council should be dissolved and the Keetoowah serve as the sole representation of the tribe. Regardless of the accuracy of these statements, such actions never occurred.<sup>33</sup>

After 1906 and with separate statehood no longer an option, the Nighthawks split from the Keetoowah Society to serve as a secluded, apolitical, and religious group. The Keetoowah Society continued to fight against allotment and asserted they represented the Cherokees' best interests. In 1905 they applied for and received a corporate charter under the name Keetoowah Society, Incorporated to function as a business and sue the US for funds still owed to the Cherokee. With this charter, even if the Keetoowah were unable to maintain or secure further tribal self-determination, they could at least handle finances and aid their people.

Other former leaders, such as Chief William Charles Rogers accepted the tribe's fate. Even though the Keetoowah Society continued to fight against allotment, it and other groups of Cherokees split into several community-level groups to aid those who lived nearby. Some of these groups solely focused on religion and traditional living. Others worked similarly to the Keetoowah Society, such as the Cherokee Executive Council, Eastern and Western Cherokee, Tulsa Contingent, and the Cherokee Executive Committee. These groups, which also included Rogers, formed and functioned as businesses to handle finances and advocate for aid for their destitute people.

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<sup>33</sup> Conley, *The Cherokee Nation*, 204; Mankiller, *Mankiller*, 171; "Keetoowah History," United Keetoowah Band of Cherokee Indians, [www.ukb-nsn.gov](http://www.ukb-nsn.gov) (accessed March 1, 2013); Duncan, "The Keetoowah Society," 53-4; Brad Agnew, "William Wayne Keeler," *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=KE002> (accessed February 13, 2018).

After nearly two decades of functioning solely through community-level groups, the Nighthawks call all the Keetoowah and later the other Cherokee factions together to unify. Despite the Nighthawks serving as one of the first factions to remove themselves to individual communities to focus on religion and traditional living, they were the faction to call for unification. Sam Smith and the other Traditionals, after enduring the destitution and landlessness caused by allotment and without representation through a tribal government, realized they needed to work together to not only serve all the Cherokee but to also utilize the talents of those who had been educated in Anglo American business and law.

This new generation of leaders in the 1920s shared the same hardships, which also led to faction unification. This new generation had endured allotment and the dissolution of their tribal government. They witnessed and cared for their elders and other friends and family who were impoverished and landless. These leaders shared the experience of serving as de facto governments at the community level to provide care for their people. They shared the common goal of surviving the aftermath of allotment as well as later laboring for tribal self-determination. In addition, these leaders lacked their predecessors' experiences of violent intratribal conflict and feelings of betrayal, which enabled them to be more willing to bridge factional lines and work together to benefit all of the Cherokee people.

In the 1920s, the various factions organized into a single unit and elected Levi Gritts as the representative of all the Cherokee. Gritts was supported by the gathered factions, including the Keetoowah, Nighthawks, and Cherokee Executive Council. At this time, the US refused to recognize the coalition de facto government or work with Gritts. Just as the organized Cherokee met another defeat, the tide of US Indian policy was about to change. After the Meriam Report of 1928 illuminated the wrongs of the allotment and assimilation practices, reformers and the new Commissioner of Indian Affairs John Collier began to lobby for further tribal self-determination.

The spirit of cooperation and work to organize and elect a single leader proved useful for the upcoming favorable policies of the Indian New Deal.

## CHAPTER VI

### AN OPPORTUNITY: THE INDIAN REORGANIZATION ACT, THE OKLAHOMA INDIAN WELFARE ACT, AND THE KEETOOWAH

With perfect timing, as the Cherokees were coming together, a shift occurred in US Indian policy. The effort and experience of unification of the various factions would prove advantageous and enable the Cherokee to take advantage of the new favorable legislation. To fully comprehend the new opportunities and the importance of the previous unification work by the Cherokee, one must understand the changes that occurred in US federal legislation, and a new generation of reformers and government officials behind them.

Important changes in the federal government slowly ended the assimilation policies in the 1930s. New Commissioner of Indian Affairs John Collier persuaded Franklin D. Roosevelt to sign an executive order to abolish the Board of Indian Commissioners, which consisted of staunch assimilationist supporters. In addition, on August 12, 1933, Secretary of Interior Harold Ickes signed a bureau order that ended the allotment policy. The order stated that no more trust or restricted Indian lands could be sold.<sup>1</sup>

Another occurrence in the 1920s that brought further awareness to the plight of American Indians, and served as a precursor to Collier's actions was the Meriam Report. Along with other grievous errors in Indian policy, the report illustrated that allotment had turned natives into a

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<sup>1</sup> Jon S. Blackman, *Oklahoma's Indian New Deal* (Norman, OK: University of Oklahoma Press, 2013), 56.

“population of paupers.”<sup>2</sup> Historian Angie Debo in *And Still the Waters Run* not only personally witnessed and wrote about the conditions described in the Meriam Report, she also publicly exposed prominent men who had swindled and profited from the American Indians and the allotment system.<sup>3</sup>

In the late-nineteenth and early-twentieth centuries, the wealthy began to see it as their duty to help the less fortunate. A group of philanthropists referred to themselves as "Friends of the Indian" met annually to discuss American Indian policies. An ethnocentric gathering of wealthy white men and women, these reformers believed they knew better than the natives themselves what would benefit the tribes. With their monetary influence, they held considerable sway with members of Congress, the president, and other government officials. Missionary societies, which included more women, often supported and joined these reformers' meetings and policies. The reformers initially believed allotment would prove best for the Indians by breaking up reservations, making American Indians citizens and subject to state laws, and educating the children in trades. However, after the dissemination of the Meriam Report and proof that allotment further impoverished natives, these reforms became receptive to the changes suggested by John Collier.<sup>4</sup>

The poverty caused by allotment was further exacerbated by a depression that affected the rest of the nation. With the beginning of the Great Depression in 1929, the financial panic and poverty that touched all of Anglo America also affected tribes. Already suffering from being forced into an obsolete economy of yeoman farming, American Indians faced even worse

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<sup>2</sup> The Problem of Indian Administration. Report of a Survey Made at the Request of Honorable Hubert Work, Secretary of the Interior, and Submitted to Him, February 21, 1928. <http://files.eric.ed.gov/fulltext/ED087573.pdf> (accessed October 22, 2017) [hereafter cited as the Meriam Report].

<sup>3</sup> Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton, NJ: Princeton University Press, 1940).

<sup>4</sup> "United States Indian Policy: Reform Movement" in *Encyclopedia of the American West*, edited by Charles Phillips and Alan Axelrod (New York City, NY: Macmillan Reference USA, 1996), [http://link.galegroup.com/apps/doc/BT2330501520/UHIC?u=lnoca\\_hawken&xid=86f239f1](http://link.galegroup.com/apps/doc/BT2330501520/UHIC?u=lnoca_hawken&xid=86f239f1) (accessed February 13, 2018).

conditions of poverty and hopelessness. While many white Americans looked for work, subsistence farms for natives were decimated by drought and many starved. Banding together to fight for rights of self government became less of a priority when they had to focus on day-to-day survival.

President Franklin D. Roosevelt quickly instituted reforms to ease the suffering of the Great Depression after his election. The creation and evolution of the Indian New Deal by Collier functioned similarly to FDR's other programs to provide immediate relief and then reform to continue improvements into the future. He also worked to get American Indians included in existing New Deal programs, such as the establishment of the Indian Division of the Civilian Conservation Corps. Collier sought to reorganize the Indian Bureau to end the allotment policy that further impoverished natives. He remained vocal that the allotment policies of the last sixty years caused the depressed condition of the natives and continued to negatively affect the survival and future of the tribes. Collier became convinced that in order to achieve the immediate and longterm goals, reform legislation needed to be passed. While angering those entrenched in the idea of assimilation, Collier made these proposals. Then came his grander and more radical ideas of supporting tribal communities, enlarging landholding, fostering native self-government, and preserving indigenous culture through the Indian New Deal.<sup>5</sup>

New Deal programs sought to aid natives in daily survival, but it was not until the Indian Reorganization Act (IRA) in 1934 that progress was made towards native-led autonomy. Commissioner of Indian Affairs John Collier labored to improve the lives of American Indians as well as to keep their culture intact in the process, previously unheard of in US policy. The IRA was meant to stop allotment, provide ways for natives to acquire more land, strengthen tribal governments, and assist tribes to develop businesses, higher education, and more. Overall, it

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<sup>5</sup> Blackman, *Oklahoma's Indian New Deal*, 54, 56-7; Rose Stremlau. *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill, NC: University of North Carolina Press, 2011), 258.

ended allotment but did little to boost tribal self-determination for all Indians as it excluded tribes in Oklahoma from some of its articles, including self-government. The Secretary of the Interior still exercised massive control over tribal elections and governmental functions there.<sup>6</sup>

Despite little progress, Indian policy in the early twentieth century marked an important reversal of the damaging US policy of assimilation. For the first time, US officials such as John Collier, Felix Cohen, D'Arcy McNickle, and Nathan Margold labored to boost self-determination. Cohen wrote *The Handbook of Federal Indian Law*, which is still used today.<sup>7</sup> These men not only sought to bring about change for the better of the natives but also had to move public sentiment away from assimilation as a solution.

In July 1934, prior to Congressional hearings on new native legislation, John Collier sent questionnaires to various Indian superintendants regarding the status of the indigenous living in their districts. A. M. Landman, Superintendent of the Five Tribes reported "that the greatest impediment among the Cherokee was the Mixed-Bloods [sic] who would control any tribal organization."<sup>8</sup> Landman stated that he believed help for the impoverished could best be handled by the Traditionals themselves, but that problems resulted from each individual faction wishing to serve as the sole representative for the tribe.

In contrast to the methodology of passing legislation in the past with little to no native input, John Collier travelled throughout Indian country to hold hearings with various tribes to get their opinions on the IRA, initially named the Wheeler-Howard Act after Senator Burton K. Howard who introduced it and Representative Edgar Howard who cosponsored. After more than

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<sup>6</sup> Wilma Mankiller and Michael Wallis, *Mankiller: A Chief and Her People* (New York City, NY: St. Martin's Press, 1993), 172-3, 175-7; Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque, NM: University of New Mexico Press, 2005), 204; Stremlau, *Sustaining the Cherokee Family*, 258.

<sup>7</sup> Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, DC: US Government Printing Office, 1941).

<sup>8</sup> Georgia Rae Leeds, *United Keetoowah Band of Cherokee Indians in Oklahoma* (New York, NY: Peter Lang, 1996), 14; Francis Paul Prucha, *The Great Father: The United States Government* (Lincoln, NE: University of Nebraska Press, 1995), 971.



two centuries of broken treaties, American Indians remained wary and distrustful of these travelling US officials and their promises of new legislation to benefit them. Tribes varied, sometimes even amongst themselves, on their viewpoints on the IRA. According to Jon Blackman, some Pawnees opposed it, fearing the Progressives who sold their land would control the tribe. Comanches in Oklahoma opposed it because they did not wish their current manner of governance to change. The Fort Sill Apaches contended it would hinder economic and social advancement. Often, the discord within tribes boiled down to a conflict between Progressives and Traditionals on what constituted the best path for their people. However, other issues complicated the process, such as the tribes being unable to interpret the technical legal language of the act, the question of the fate of the landless, and if the act would only exist until the US government changed its policy and forced something else upon them.<sup>9</sup>

The Cherokee tribe held similar opinions. The Nighthawks and other Traditionals favored the act as the best way to regain self-determination. Others supported it because they believed it would help obtain more land and stop the allotment system. Those still laboring for daily survival did not support Collier's long range plans and instead focused on what would eliminate destitution. They welcomed the proposed financial aid for their daily survival.<sup>10</sup>

Many Traditionals supported the IRA as a way to gain more participation in their own governance. In addition, many approved the IRA as it ended the allotment policy while providing opportunities to gain land. The Keetoowah Society passed resolutions to show their support for the new legislation. However, the Progressive Cherokees opposed the IRA. They worried they would lose the land they held individually if ownership reverted back to traditional communal holdings. Progressive Cherokee and former US Representative William Wirt Hastings opposed

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<sup>9</sup> Frederick E. Hoxie, "The Goals of the Indian Reorganization Act." US Senate Committee on Indian Affairs. "Frederick E. Hoxie Testimony." <https://www.indian.senate.gov/sites/default/files/upload/files/Frederick-Hoxie-testimony.pdf> (accessed October 22, 2017); Blackman, *Oklahoma's Indian New Deal*, 71-3.

<sup>10</sup> Blackman, *Oklahoma's Indian New Deal*, 86; Leeds, *United Keetoowah Band of Cherokee Indians*, 14.

the IRA, believing it made the Cherokees feel inferior and would slow the process of assimilation. Both Progressives and Anglo Americans still contended assimilation was the best method for American Indians to survive and blend into Anglo society.<sup>11</sup>

A. M. Landman seemed to have been in a minority of non-natives supporting the IRA within Oklahoma. Such change in policy brought heavy opposition from both Anglo Americans and some American Indians. Non-native politicians agreed with Progressives that the new legislation would strip those living among white society of their progress in assimilation. Hastings spoke out early and often. In addition to reversing the assimilation policy, Hastings opposed the provisions that would shift the authority on land settlement and probate issues from local county courts to the Secretary of the Interior. He argued that the federal government had no business taking control of such local issues and leaders who knew the Indians in Oklahoma and what benefitted them best. Also, lawyers and others who made their living from work related to land settlement would lose their source of income if the federal government assumed control.<sup>12</sup>

Led by Senator Elmer Thomas, the Oklahoma congressional delegation opposed the IRA and Thomas proposed contrary amendments. One proposition excluded most Oklahoma natives from the sections of the bill allowing for establishing new reservations, Indian corporations, and tribal governments. Historians Angie Debo and Jon Blackman argued that Thomas and Hastings only opposed the extension of restrictions on native land because state tax revenue could not be collected on restricted allotments. The benefit of lifted restrictions and lost revenue from taxes were mentioned often in meetings and Congressional hearings regarding the new bills. Obviously, money played a large role in the decisions of politicians, lawyers, and non-natives. Both Wirt and

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<sup>11</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 14; Debo, *And Still the Waters Run*, 369; Blackman, *Oklahoma's Indian New Deal*, 72, 134; Prucha, *The Great Father*, 970-1; Todd J. Kosmerick, "William Wirt Hastings," in *The Encyclopedia of Oklahoma History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=HA051> (accessed October 22, 2017).

<sup>12</sup> *Harlow's Weekly*, March 17, 1934, 15; Vine Deloria, ed. *The Indian Reorganization Act: Congresses and Bills* (Norman, OK: University of Oklahoma Press, 2002), 329; Blackman, *Oklahoma's Indian New Deal*, 75.

Thomas' efforts served as a contributing factor that led to Oklahoma Indians being excluded from the IRA.<sup>13</sup>

Oklahoma newspapers such as the *Oklahoma City Times*, *Okmulgee Daily Times*, *Shawnee Morning News*, and *The Muskogee Daily Phoenix* served as the mouthpiece for white opposition to the IRA and carried a tone of wishing to maintain assimilation through a paternalistic idea that they knew the best course for the natives. Some missionary organizations also spoke against the Wheeler-Howard Bill because they believed Collier too sympathetic towards native religion.<sup>14</sup>

Thomas continued to work behind the scenes to gain support for his amendment. He obtained support for the provision that would exclude most Oklahoma Indians from establishing new reservations, native corporations, and tribal governments. The Oklahoma natives would still be eligible for the financial aspects of the IRA. Thomas stated that these amendments kept his indigenous constituents from being forced backwards by creating reservations. Jon Blackman argued that the motive for objection from white Oklahomans resulted from a lack of state tax revenue if the restrictions on native land were extended. This put politicians' greed for further income over the best interests of the natives, without ever having consulted them. Several American Indians, from various tribes including the Cherokee Traditionalists, feared that if the

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<sup>13</sup> Deloria, ed. *The Indian Reorganization Act*, 329; *Harlow's Weekly*, March 17, 1934, 15; Leeds, *United Keetoowah Band of Cherokee Indians in Oklahoma*, 14; Debo, *And Still the Waters Run*, 368-69; Prucha, *The Great Father*, 971; Kosmerick, "William Wirt Hastings."

<sup>14</sup> William Rice, "Statement of G. William Rice to the US Senate Committee on Indian Affairs on 'The Indian Reorganization Act - 75 Years Later: Renewing Our Commitment to Restore Tribal Homelands and Promote Self-Determination.'" US Senate Committee on Indian Affairs. <https://www.indian.senate.gov/sites/default/files/upload/files/William-Rice-testimony.pdf> (accessed October 22, 2017); "Indian Bill Abounds with Objectionable Features," *Okmulgee Daily Times*, date unknown; "Time for Heroic Action," *The Muskogee Daily Phoenix*, April 6, 1935; "Dangerous Indian Legislation," *The Okemah Daily Leader*, 1935; Blackman, Oklahoma's *Indian New Deal*, 58, 75-6, 89; Debo, *And Still the Waters Run*, 369.

restrictions on native land were lifted, those who remained unfamiliar with white business transactions would lose their land and become even more destitute.<sup>15</sup>

The IRA (Wheeler-Howard Bill) became law in June 1934. Collier's original proposal had been cut from forty-eight to five pages. The act excluded Oklahoma Indians from the ability to organize constitutional governments and incorporate under charters. As a result, as far as self-governance, the IRA did not change anything for the Cherokees. The Keetoowah Society, Inc. continued to function in a limited capacity under its corporate charter from 1905. The Society mostly functioned as a business entity, filing suits with the US Court of Claims for financial reparations to assist their people.<sup>16</sup>

However, the Cherokees wanted to participate in the new policy despite their exclusion from the act. Levi Gritts became chief of the Keetoowah Society, Inc. in 1928. After the passage of the Indian Reorganization Act, he travelled to Washington, DC, many times to attempt to organize the Cherokee in accordance to the new act. Even though the added amendments excluded Oklahoma indigenous from organizing a new tribal government, the Keetoowah continued to lobby for their people's sovereignty.<sup>17</sup>

Despite the ineligibility to reorganize their governments, Oklahoma Indians could still take advantage of the new policy's financial aspects. The IRA allowed an annual \$2 million appropriation to purchase land, as well as an annual fund of \$250,000 for vocational training and college scholarships. In addition, the act exempted natives from many civil service requirements

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<sup>15</sup> Rice, "Statement of G. William Rice to the US Senate Committee on Indian Affairs on 'The Indian Reorganization Act'; Blackman, *The Indian New Deal*, 75-6, 89.

<sup>16</sup> *Indian Reorganization Act*, June 18, 1934. <http://aghca.org/wp-content/uploads/2012/07/indianreorganizationact.pdf> (accessed October 22, 2017); "Indian Reorganization Act," *United States Statutes at Large*, 48, part 1, 1934, 984-88; Stremlau, *Sustaining the Cherokee Family*, 238; Sandra Sac Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997, [www.cherokeeobserver.org/parker.html](http://www.cherokeeobserver.org/parker.html) (accessed December 1, 2017); Peter M. Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," *The Chronicles of Oklahoma* 50 (1972): 347-71; Blackman, *Oklahoma's Indian New Deal*, 76-7.

<sup>17</sup> Leeds, *The United Keetoowah Band of Cherokee Indians*, 14.

for employment within the Office of Indian Affairs. However, while Oklahoma natives were not barred from benefitting from these financial provisions, they did not receive much actual support. They did not qualify for aid from the revolving fund because only a federally recognized, chartered tribal government could apply for aid from this source. A recognized government was also necessary for access to funds for land and property improvements from the Indian office. Opponents achieved their goal of keeping the Oklahoma indigenous from the communal aspects of the IRA, preferring them to live in an individualistic manner similar to mainstream white society. But in doing so, they also cut them off from most of the financial aid the IRA sought to help entire tribes, not just individuals. However, the financial portions of the IRA ultimately proved difficult for Congress to implement as no funds had actually been implemented and conflict existed within bureau administrators, members of Congress, legal experts, and even anthropologists as how to best apply the IRA.<sup>18</sup>

After the passage of the IRA, Collier promised to extend its terms to Oklahoma natives and immediately set to work. Senator Thomas agreed to new legislation as long as it suited the conditions of Oklahomans specifically. In September 1934, Thomas announced a schedule of planned visits to all Indian agencies within the state, inviting Collier to attend. Throughout October 1934, Thomas and Collier concluded meetings with various Oklahoma tribes to gauge what needs existed for the new legislation. However, throughout most of the meetings, Collier defended the IRA while Thomas reiterated its faults and that it would return natives backwards to reservation life.<sup>19</sup>

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<sup>18</sup> *Indian Reorganization Act*, June 18, 1934. <http://aghca.org/wp-content/uploads/2012/07/indianreorganizationact.pdf> (accessed October 22, 2017); "Indian Reorganization Act," *United States Statutes at Large*, 48, part 1, 1934, 984-88; Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997; Debo, *And Still the Waters Run*, 369-70; Blackman, *The Indian New Deal*, 77, 82.

<sup>19</sup> Congress, House, Committee on Indian Affairs, *To Promote the General Welfare of the Indians of Oklahoma*, 74th Cong., 1st Sess., April 22, 1935; Debo, *And Still the Waters Run*, 370; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71; Blackman, *Oklahoma's Indian New Deal*, 78.

On October 1, shortly before leaving for Oklahoma, Collier spoke at the Indian Exposition in Atlanta, Georgia. He stated that Oklahoma natives suffered from cruel wrongs and if they had been included in the IRA, it "would have done away with the avaricious local guardians who fatten upon Indians." Currently, he maintained, they still remained at the mercy of "blood-sucking local guardians."<sup>20</sup> Oklahoman politicians felt personally attacked by his statements, even though Collier sought to simply garner sympathy and support for the new legislation. This slight influenced the dialogue of the early OIWA meetings, with Thomas coloring his speeches with defensive remarks and attacks against Collier. Livid, Thomas stated that "the legislation [IRA] was designed to primarily perpetuate the Indian Bureau and I am against that." However much Thomas also opposed the federal government taking charge of natives, he never once mentioned or considered the tribes governing themselves.<sup>21</sup>

On October 15, 1934, the first meeting regarding new legislation for Oklahoma Indians occurred in Muskogee, with more than two thousand natives from the Five Tribes attending. Thomas and Collier verbally sparred most of the meeting. Thomas announced the IRA would not prove beneficial for the Oklahoma indigenous but wanted to hear directly from the tribes what would suit them better. He reiterated that the IRA would have hurt those who held property and put them back on a reservation of the poorest quality land, stating that "Oklahoma is the Siberia of the Indian race."<sup>22</sup>

Thomas also stated that the IRA further proved that Collier only knew about reservation Indians in Arizona and New Mexico. Collier conceded that the new legislation needed to be

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<sup>20</sup> *The Daily Oklahoman*, October 2, 1934; Theda Perdue, *Race and the Atlanta Cotton States Exposition of 1895* (Atlanta, GA: University of Georgia Press, 2011), 92; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71; Blackman, *Oklahoma's Indian New Deal*, 79-80.

<sup>21</sup> *Harlow's Weekly*, October 13, 1934, 10; *The Daily Oklahoman*, October 2, 1934; Perdue, *Race and the Atlanta Cotton States Exposition of 1895*, 92; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71; Congressional Directory, 73 Cong., 2nd Sess., 1934 (Washington: Government Printing Office), 446.

<sup>22</sup> John Collier, "Present Status of Oklahoma Indians," *Harlow's Weekly*, 43 (July 14, 1934): 14-15; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71.

suitable for Oklahoma Indians due to their differences from natives in other areas and that could be achieved by altering the existing IRA. However, he said, the purpose of the IRA was to liberate American Indians, that "the white man is organized for mutual benefit...why can't the Indians?"<sup>23</sup>

At the second meeting on October 16, 1934 in Miami, Thomas continued his attacks on Collier and the Indian Bureau. Thomas had a history of speaking against the BIA. He had before been so critical of the Bureau of Indian Affairs previously that he had not been permitted to testify on bills regarding American Indians before the House Committee on Indian Affairs. However, by the third meeting on October 18, 1934, Collier and Thomas had forged a fragile alliance to achieve a bill benefitting Oklahoma Indians. They agreed on three points: existing legislation was not satisfactory for Oklahoma; effective provisions for purchasing land and credit was needed; and, that natives needed legal protection from encroaching white settlers.<sup>24</sup>

At the time of the next meeting on October 22, Collier had returned to Washington, DC, for unrelated work, and was replaced by Assistant Commissioner of Indian Affairs A. C. Monahan. At this meeting, Thomas argued against the organization by charter provision of the IRA, stating that natives would support this provision so they could go into business but then oddly asserts, "I know you are not interested in the continuation of boarding schools."<sup>25</sup> It is unclear how Thomas equated organizing a tribal government via charter with the cultural genocide of boarding schools unless he meant American Indian children would not be allowed in public schools. It is possible, as many Oklahoma natives voiced their approval of the new

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<sup>23</sup> *The Indian Journal* (Eufala, OK), October 4, 1934, 1; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71; Blackman, *Oklahoma's Indian New Deal*, 80-1; John Collier, "Present Status of Oklahoma Indians," *Harlow's Weekly*, 43 (July 14, 1934): 14-5; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 360.

<sup>24</sup> *Harlow's Weekly*, October 13, 1934, 10; *The Daily Oklahoman*, October 2, 1934; Perdue, *Race and the Atlanta Cotton States Exposition of 1895*, 92; Peter M. Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," *The Chronicles of Oklahoma* 50 (1972): 347-71; Blackman, *Oklahoma's Indian New Deal*, 83-5.

<sup>25</sup> Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71; Blackman, *Oklahoma's Indian Welfare Act*, 85-6.

legislation, that Thomas used the emotional trauma of boarding schools to turn the tide against support of a new bill.<sup>26</sup>

Factionalism within tribes did not go wholly ignored during discussions of the proposed new legislation. After the second meeting, Louis McDonald, a person on the Ponca Business Committee, referred to arguments amongst the Poncas between Traditionals and Progressives regarding the IRA. The Arapahos voiced similar concerns. Blackman argued that this sort of division was clearly evident among many tribes as they considered the IRA. For the Cherokees, the record of such factionalism is absent from any existing records. For a tribe that divided, sometimes violently, over removal, the American Civil War, and allotment, it is surprising that publicized arguments and meetings did not occur regarding the IRA or Oklahoma bills. Some Progressives stated they opposed the IRA when they believed it would force them to give up their land and live on reservations but once this misconception was cleared, no other objections were recorded. Even disputes regarding which faction would govern a new, reorganized Cherokee tribe is absent from the record. The only mention of a faction at this time is the Seven Clan Society Christians, a Cherokee Traditional organization with 297 members, which sent a resolution to Thomas asking to hold their lands in common. No mention is made from them regarding who should govern.<sup>27</sup>

In January 1934, Senator Thomas and Representative Will Rogers of Oklahoma became chairs of the Indian Affairs committees in the Senate and House, respectively. After the meetings with tribes in Oklahoma regarding new legislation, Thomas and Rogers worked together to draft a bill similar to the IRA. They introduced the Thomas-Rogers Bill on February 27, 1936.<sup>28</sup>

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<sup>26</sup> Blackman, *Oklahoma's Indian New Deal*, 86; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71.

<sup>27</sup> Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 347-71; Blackman, *Oklahoma's Indian New Deal*, 82, 85.

<sup>28</sup> Representative Will Rogers is not the same person as the famous Oklahoma comedian by the same name. US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of*



Several aspects of the Thomas-Rogers Bill, later known as the Oklahoma Indian Welfare Act (OIWA), remained similar to the IRA. Section 12 acknowledged the right of natives to organize themselves. The section outlined the procedures for establishing a constitutional tribal government, beginning with a charter of incorporation, similar to that of the IRA. Section 17 removed the exemptions to all benefits of the IRA that had been imposed by Thomas as additional amendments in the act. This gave Indians access to the \$10 million revolving credit fund for indigenous chartered corporations.<sup>29</sup>

The OIWA differed from the IRA in its treatment of the role of blood quantum. The IRA only used blood quantum to define someone as indigenous if they possessed one half Indian blood or more. The OIWA introduced the use of blood quantum to determine if natives would have their lands held in trust by the federal government, and exempt from taxes but unable to be sold or leased. According to historian Circe Sturm, this provision served as a measuring tool for the US government to "control access to economic resources," while non-natives used it as "a justification for economic exploitation."<sup>30</sup>

The OIWA defined an "Indian of the first degree" as any person whose name appeared on membership rolls of the tribe or is classified by the Secretary of the Interior as having "one-half or more of Indian blood." The new bill proposed that the lands, property, and funds of the "Indians of the first degree" be restricted by the Secretary of the Interior and held in trust. The document defined an "Indian of the second degree" as any person whose name was on the official rolls of the Indian Office and was classified by the Secretary of the Interior as a person having

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*the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Leeds. *The United Keetoowah of Cherokee Indians in Oklahoma*, 14.

<sup>29</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Blackman, *Oklahoma's Indian New Deal*, 92; Stremlau, *Sustaining the Cherokee Family*, 238.

<sup>30</sup> Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma* (Los Angeles, CA: University of California Press, 2002); US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Blackman, *Oklahoma's Indian New Deal*, 91.

"less than one-half Indian blood." The OIWA stipulated that all lands, property, and funds of "Indians of the second degree" were relieved of all restrictions if approved by the Secretary of the Interior. Lastly, at least once every four years, the Secretary of the Interior had to create a competency commission to examine each "Indian of the second degree" to judge if their restrictions should be removed.<sup>31</sup>

The blood quantum provisions of the OIWA proved to be the most controversial among those who would otherwise support the bill. Laurence E. Lindley testified on behalf of the Indian Rights Association (which had no native members) that they supported the legislation except for this portion. Lindley stated that relying on blood quantum served as one of the most effective ways to separate the Indian from their land. Many thought back to the Dawes Act and those "full bloods" who lost their lands due to being deemed "incompetent" and placed under the care of greedy guardians who took their lands and earnings.<sup>32</sup>

The Grand Council of the Five Civilized Tribes sent a letter to Senator Elmer Thomas regarding the use of blood quantum and the definition of who qualified as an "Indian" within the proposed act. They requested greater clarification regarding the contradictions in said act on restrictions of lands and qualifications for financial credit. The council argued that the act initially states restrictions would be based on health, age, character, experience, knowledge, and ability rather than blood quantum. In another, it authorized the Secretary of the Interior to determine on a case-by-case basis, along with the requirements of blood quantum. Lastly, they complained about people being "shipped" into Oklahoma to run Indian affairs without any experience or knowledge

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<sup>31</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935, 1-2; Letter from Harold Ickes to Elmer Thomas, February 23, 1935, Folder 112, Box 21, Elmer Thomas Collection, Carl Albert Congressional Research and Studies Center, Monnet Hall, University of Oklahoma, Norman [hereafter cited as ET].

<sup>32</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Debo, *And Still the Waters Run*, William T. Hagan, *Taking Indian Lands: The Jerome (Cherokee) Commission, 1889-1893* (Norman, OK: University of Oklahoma Press, 2003); Blackman, *Oklahoma's Indian New Deal*, 100; Circe Sturm, *Blood Politics*.

and advocate for natives to earn these positions. The council stated with the contradictory terms of the act, that one would need a considerable amount of political pull to benefit from the provisions of the OIWA. However, these concerns proved irrelevant after the second draft of the act.<sup>33</sup>

On May 9, 1935, Secretary of the Interior Harold Ickes testified before the House Committee, endorsing the Thomas-Rogers Bill. He called the previous policies of Congress "heartless," stating this new legislation served as a reversal of past mistakes. He said "the Oklahoma Indians themselves are unanimously in favor of this measure...."<sup>34</sup> The endorsement of the Secretary of the Interior proved an invaluable asset in the discussion of the bill. In addition, several Oklahoman natives testified their tribe's approval during the hearings. For an unknown reason, no Cherokees were included among the indigenous who testified.

However, the Thomas-Rogers bill angered politicians in Oklahoma. The Oklahoma State Legislature passed a resolution condemning the extension of restrictions, removal of probate jurisdiction from the state courts, and the purchase of more land that would also be tax exempt on April 5, 1935. Those who protested most proved to be those who benefitted from the legal costs surrounding land matters and probate hearings. Lawyers stood to lose personal income gained from legal fees from handling allotment land matters. Some even called the bill communist or atheist. Many white Oklahomans opposed it because of the possible loss of state tax revenue. Within Congress, most remained uninterested in the proceedings as it did not affect them or their constituents. So they left it to the Oklahoma members. Historian Frederick Hoxie observed that

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<sup>33</sup> Letter from the Grand Council of the Five Civilized Tribes to Elmer Thomas, July 1, 1937, Folder 55, Box 34 [ET]; Letter from F. H. Daiker to L. C. Jennings and the Grand Council of the Five Civilized Tribes, April 14, 1937, Folder 55, Box 34 [ET].

<sup>34</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Blackman, *Oklahoma's Indian New Deal*, 101-2.

the indifference occurred because Congress viewed American Indians as a "western problem," similar to how African Americans were seen as a "Southern" responsibility.<sup>35</sup>

Those who did actively opposed the OIWA labored to prevent its passage. Congressmen Jack Nichols and Wesley Disney, both from Oklahoma, along with former Congress member Hastings, vehemently objected to the bill. Nichols, despite not serving on the House Committee of Indian Affairs, was allowed to participate in the hearings. He represented non-native interests from eastern Oklahoma—lawyers, judges, and guardians who profited from legal fees made from indigenous allotment litigation and probate matters. These constituents proved especially concerned with the restrictions on Indian land and Section 8 that transferred jurisdiction regarding land from the state courts to the Secretary of the Interior.<sup>36</sup>

On May 15, 1935, Nichols delivered a lengthy formal statement refuting most of Secretary Icke's remarks. He and Disney both blamed the failures of previous Indian policies on the Indian Bureau, with Collier as a specific target. They repeated their insults of Collier often, stating he looked like a mummy, only knew about reservation Indians in New Mexico and Arizona, and relied on textbooks rather than experience in his understanding of natives. Nichols also asserted that he'd heard "dozens and dozens" of Indians who opposed the bill. Nichols argued the bill served as an attempt by those like Ickes to bring the full control of Oklahoma Indians under the Secretary of the Interior and thus forcing federal control over state matters. Collier stressed that nothing in the Thomas-Rogers bill was compulsory so if any natives did not want to follow it, they would not be forced to comply.

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<sup>35</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Frederick Hoxie, *A Final Promise: A Campaign to Assimilate the Indians, 1880-1920* (Lincoln, NE: University of Nebraska Press, 2001), xi; Debo, *And Still the Waters Run*, 371-2; Blackman, *Oklahoma's Indian New Deal*, 94, 99, 102; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 368.

<sup>36</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 367; Rose Stremlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill, NC: University of North Carolina Press, 2011), 238; Blackman, *Oklahoma's Indian New Deal*, 75, 90, 98-9.

Despite Nichol's claims, those indigenous on record during the hearings all voiced support for the OIWA. Many testified during the Senate hearings, but most could not afford to stay in or return to Washington, DC, for the House hearings. While not a perfect, broad representation of all native opinions, these hearings marked a shift in Indian policy allowing indigenous voices to be heard regarding matters that affected their welfare.<sup>37</sup>

Of several natives interviewed during the Congressional hearings, most overwhelmingly supported the OIWA. However, a number of Oklahoma Indians did oppose the new bill. Some Progressives, especially those who already felt assimilated, still believed the OIWA would separate them from the white society where they were educated, lived, and made their living. Some natives opposed any new Indian legislation from the federal government. They distrusted the US and new ideas of any non-native politicians and reformers. The indigenous had experienced the loss of land, sovereignty, and rights with each new bill. The removal policy had cost them their ancestral homelands and the lives of relatives, allotment resulted in the massive loss of lands, and the Curtis Act eliminated their tribal governments. These people and several generations before had seen white settlers covet their land, resulting in policies advocated by politicians as advantageous for the Indian. With the legacy of broken treaties and harmful Congressional acts, the suspicion and distrust of many natives was unsurprising.

On July 29, 1935, the Senate Committee on Indian Affairs reported on an amended Thomas-Rogers bill. They struck out Section 8, leaving the Oklahoma Indians under the jurisdiction of the state in regards to probate and land matters. The Secretary of the Interior could not extend restrictions on Indians with less than one-half of "Indian blood." Most of the suggested changes returned jurisdiction to state courts and liberalized the provisions in declaring the natives'

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<sup>37</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 367; Stremlau, *Sustaining the Cherokee Family*, 238; Blackman, *Oklahoma's Indian New Deal*, 75, 90, 98-9.

land unrestricted. This bill kept the portions addressing economic and tribal governance. It passed the Senate on August 16, 1935. However, as a result of the undermining work of Disney and Nichols, the Thomas-Rogers bill was tabled, effectively killing the first version of the OIWA and this opportunity for tribal self-determination.<sup>38</sup>

Almost immediately after Congress adjourned, Senator Thomas began working with Collier on a new bill. Thomas presented the second version to the Senate. This shorter version, designed to pass quickly, removed the blood quantum designation, the transfer of jurisdiction from state courts to the Secretary of the Interior, and the competency commission to remove restrictions. The second version of the bill retained the welfare, economic, and organizational aspects of the original OIWA.<sup>39</sup>

In April 1936, the House Committee on Indian Affairs held hearings on the revised Thomas-Rogers bill. The hearings dragged into June as Congressman Disney continued his adamant opposition, even though he was not a member of the committee. He requested an amendment to exempt the Osage from the OIWA, describing the tribe as more independent than those in the rest of Oklahoma. Disney never clarified the basis of his claims regarding the Osage and their differences from other tribes. The committee approved his request, and then Disney gave his support. However, the Osage sent a telegram to the committee, requesting they not be excluded from the new legislation. Obviously, Disney supported the wishes of non-native business and legal interests rather what the tribe wanted. Unfortunately the provision exempting the Osage remained.<sup>40</sup>

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<sup>38</sup> US Congress. House of Representatives. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma and for Other Purposes*. HR 6234, 74th Cong., 1st sess., 1935; Wright, "John Collier and the Oklahoma Indian Welfare Act of 1936," 368; Stremlau, *Sustaining the Cherokee Family*, 238; Blackman, *Oklahoma's Indian New Deal*, 75, 90, 98-9.

<sup>39</sup> Congress. House. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma*. 74th Cong., 2nd Sess., April 1, 1936; Blackman, *Oklahoma's Indian New Deal*, 102.

<sup>40</sup> Congress. House. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma*. 74th Cong., 2nd Sess., April 1, 1936; "Osage Association Fights Indian Bill," undated

The second version of the bill did not change the length of restrictions on Indian land. It authorized the Secretary of the Interior to acquire land for natives without homesteads. Tribes could organize via charter of incorporation, which would give them access to a revolving credit fund and allowed them to engage in business, administer tribal property, and manage local affairs. After a charter, the tribe could organize by constitution, subject to approval by the Secretary of the Interior. Any ten or more natives could organize and form a cooperative association for credit administration, production, marketing, and management. Lastly, the second version maintained jurisdiction regarding land allotments and probate issues to state courts.<sup>41</sup>

The Thomas-Rogers bill passed out of the House Committee on Indian Affairs on June 15, 1935. The House passed the bill the next day. The bill passed Senate on June 18 and on June 26, 1936, President Franklin D. Roosevelt signed the OIWA into law. The OIWA marked a new era of Indian policy, embracing tribal self-determination and ending the assimilationist policy of the Dawes and Curtis acts. The legislation gave Oklahoma Indians the right to administer tribal property and elect officers. Most importantly, it allowed natives in the state to form a corporation and seek a federal charter, which would give them “all the rights and responsibilities of any federally recognized Native American tribe.”<sup>42</sup>

At first, many Cherokees did not attempt to organize because they believed themselves inherently sovereign and did not need confirmation from the US. However when the act passed, the Cherokee Nation had no federally recognized government. Without an authority recognized

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newspaper clipping, Folder 111, Box 21 [ET]; Wright, “John Collier and the Oklahoma Indian Welfare Act of 1936,” 370; Blackman, *Oklahoma's Indian New Deal*, 103.

<sup>41</sup> US Congress. *An Act to Promote the General Welfare of the Indians of the State of Oklahoma, and For Other Purposes*, June 26, 1936. S. 2047; Congress. House. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma*. 74th Cong., 2nd Sess., April 1, 1936; Debo, *And Still the Waters Run*, 372-3.

<sup>42</sup> Congress. House. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma*. 74th Cong., 2nd Sess., April 1, 1936; Parker, “UKB of Cherokee Indians in Oklahoma,” *The Cherokee Observer* (Blackwell, OK), September 1997; Stremlau, *Sustaining the Cherokee Family*, 238; Blackman, *Oklahoma's Indian New Deal*, 103; Conley, *The Cherokee Nation*, 204; Mankiller, *Mankiller*, 177.

through a charter of incorporation and constitution, the tribe remained ineligible for the sorely needed financial benefits from the OIWA and had no nation-to-nation relationship with the US.

The process of organization under the OIWA required two steps, beginning with an application for a corporate charter. A charter defined the right of the tribal government to exercise the powers of a corporation, such as handling the financial affairs of a tribe and managing the funds within a national bank. Second, a tribal constitution needed to be written and ratified by native citizens to designate the powers and duties of the tribal government. Charters and constitutions relied on the Secretary of the Interior for approval.<sup>43</sup> Despite gaining federal recognition and the right to reorganize a tribal government, the terms of the OIWA did not grant full sovereignty to tribes. Things normal for government-officers, roles and duties of officials, financial management, and citizenship-most aspects of self-determination were returned. However, with all facets of organization dependent on the Secretary of the Interior, the US still maintained overarching control of the tribes as they could refuse to approve their governing documents without just cause.

Despite the Curtis Act ending US recognized tribal governments, most natives retained a form of informal, functioning government to take care of their citizens. US presidents continued to appoint "chiefs for a day" to sign land deeds for allottees, but most tribes also maintained a form of council or business committee. Many tribes maintained a tradition for group and community action, and held meetings and created voluntary organizations. In this capacity, the Nighthawks and Keetoowahs remained active for the Cherokees, along with the Cherokee Executive Committee. Historian Erik Zissu argues that tribal members did not abandon political initiative and remain passive, as Angie Debo previously implied. Instead they undertook political activity and fashioned a renewal of their collective identity. Zissu's work accurately dispels the

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<sup>43</sup> Congress. House. Committee on Indian Affairs. *To Promote the General Welfare of the Indians of Oklahoma*. 74th Cong., 2nd Sess., April 1, 1936; Blackman, *Oklahoma's Indian New Deal*, 132.



idea of indigenous passivity, even though Debo does in fact include in her work that unofficial tribal organizations continued.<sup>44</sup>

Levi Gritts travelled to Washington, DC, after the passage of the IRA to lobby for the organization of the Keetoowah under its terms. The passage of the OIWA gave the legal foundation for it to finally achieve federal recognition. The Department of the Interior found the Cherokee Nation, organized under the September 6, 1839, constitution, a government dissolved in 1906 and ineligible to reorganize under either the IRA or OIWA. Field investigators reported that Cherokee citizens, except Keetoowah, had abandoned tribal relations and had no interest in reorganization. As a result, the Cherokee Nation continued as before in a state of nonexistence with a presidentially appointed chief existing solely to sign land deeds. A council of several Cherokee organizations met in 1938 and chose J. Bartley Milam as principal chief. In April 1941 President Franklin Roosevelt appointed Milam as chief, marking the first time the appointed and elected chief was the same. Milam never applied for a charter for his tribe under the OIWA. Milam served as chief until 1949 when the Cherokee Nation returned to non-elected, US-appointed chiefs. Milam more than likely did not apply for a charter either because the intention of the Keetoowah to apply and represent all Cherokee or he did not see it necessary because he represented the tribe and had a relationship with the US.<sup>45</sup>

Continuing the leadership established with the 1921 meeting in Tahlequah and taking a different course than the Cherokee Nation, the Keetoowah began preparing for organization under

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<sup>44</sup> Debo, *And Still the Waters Run*, 259, 378; Erik Zissu, *Blood Matters: The Five Civilized Tribes and the Search for Unity in the Twentieth Century* (London: Routledge Press, 2001), 4.

<sup>45</sup> Conley, *The Cherokee Nation*, 204-05; Mankiller, *Mankiller*, 177; Allogan Slagle, *Burning Phoenix: A Study of the Federal Acknowledgement, Reorganization, and Survival of the United Keetoowah Band of Cherokee Indians In Oklahoma and of the Cherokee Nation of Oklahoma's Efforts to Terminate the Band*, petition to US government, <http://www.cornsilks.com/burningphoenix.html> (accessed December 14, 2012), 3.

the OIWA soon after its passage. Gritts visited A. C. Monahan, the Regional Coordinator for the Bureau of Indian Affairs in Oklahoma City to begin the process.<sup>46</sup>

After Gritts' visit, Monahan directed Ben Dwight and A. A. Exedine, organization field agents for the Five Civilized Tribes Agency, to investigate the possibilities of eligibility. Both agents interviewed members of the various factions within the Cherokees and found the sentiment within all groups, including the Progressives, that they wished to come together for the benefit of Traditional Indians. Dwight advised Gritts that he believed all Keetoowahs could organize under the provisions of the OIWA as they already had the charter from 1905 for the Keetoowah Society, Inc, which had been approved by the US District Court in Tahlequah. Dwight and Exedine planned a joint meeting of the Keetoowah groups to create a strategy for taking advantage of the provisions of the OIWA.<sup>47</sup>

Chief Sam Smith, the son of Redbird Smith, notified Exedine that the Nighthawks did not wish to participate in a meeting regarding reorganization under the Keetoowah Society, Inc. Monahan explained to Smith that even if the Keetoowah groups came together under one name, each entity would remain autonomous and administer government benefits to its own members. The Nighthawks still refused to participate, remaining solely a religious organization uninvolved in politics.<sup>48</sup>

Superintendent of the Five Civilized Tribes A. M. Landman issued a formal call for a meeting of the Keetoowahs for March 30-31, 1939, at the Lyons Community House, about six

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<sup>46</sup> Letter from Acting Secretary of the Interior to Henry M. Jackson, Chairman of the Committee of Indian Affairs, undated, folder 88, box 5, W. G. Stigler Collection, Carl Albert Congressional Research and Studies Center, Monnet Hall, University of Oklahoma, Norman, Oklahoma [hereafter cited as WGS]; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 14-5.

<sup>47</sup> Letter from Acting Secretary of the Interior to Henry M. Jackson, Chairman of the Committee of Indian Affairs, undated, Folder 88, Box 5 [WGS]; Letter from W. N. Maben on behalf of the Keetoowah Society, Inc. to W. D. Roberts and the Department of the Interior, May 6, 1946. Folder 73, Box 11 [ET]; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 15.

<sup>48</sup> Dwight to Monahan, June 13, 1939, SW B, National Archives in Fort Worth; Leeds, *The United Keetoowah Band of Cherokee Indians of Oklahoma*, 15.

miles south of Stillwell, Oklahoma. True to their word, Smith's Nighthawks did not participate, but the other five Keetoowah groups attended. With a common goal of reorganization to benefit all citizens, little discord occurred among the various groups. After this meeting, reference to the various Keetoowah groups became simply the Keetoowah and rarely the Nighthawks. After 1930, most Keetoowah factions had reconciled and were considered as one.<sup>49</sup>

At the March meeting, Dwight and Exedine told those gathered that a possibility existed that the US government would quickly recognize them under the OIWA because of the preexisting Keetoowah Society, Inc. charter. The assembly then hired Dwight as their legal counsel. Houston B. Teehee, a Cherokee attorney who had previously worked in Cherokee claims suits, gave a speech. He stated that even if the Nighthawks did not attend meetings, those gathered were members of the original Keetoowah Society, Inc. and that everyone was "undertaking to perfect an organization as the United Keetoowahs."<sup>50</sup>

On May 6, 1937, Dwight and Dr. Charles Wilson, anthropologist for the Bureau of Indian Affairs, met with the Nighthawks as part of their interviews regarding native sentiment towards reorganization and the historical basis of the Keetoowah. Dwight and Wilson wished to ensure that all the Cherokee groups were willing to organize as one entity. After the interviews, Wilson remained in the area to research and contact the Keetoowahs to determine if the group would be eligible to organize for "general tribal purposes."<sup>51</sup>

Concurrently with Wilson's research, the Cherokee delegates created and renamed themselves as the United Keetoowah Cherokee Indians (UKCI) to reflect the various factions working together. An elected committee drew up a constitution and bill of rights and submitted it

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<sup>49</sup> Allogan Slagle, "Cherokee: United Keetoowah Band," in *Native America in the Twentieth Century: An Encyclopedia* (London: Routledge Publishing Company, 1996), 98-9; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 15.

<sup>50</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 15-6.

<sup>51</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 14.

on July 9, 1939, to their members for approval. The gathering discussed various ideas they wished to be included in their new recognized government.

The preamble of the new constitution stated that the Keetoowah were organizing to promote their common welfare and to obtain their rights and privileges from the US and the State of Oklahoma. An elected committee drew up the document, including a bill of rights. The constitution provided for four officers and twenty-seven councilmen. It required the councilmen, secretary, and treasurer to have at least "half blood" and the chief and vice much be "full blood." To vote, the citizens could be no less than one half Cherokee. The Keetoowahs wished to exclude freedmen and intermarried whites from their membership, as they had pushed for in 1899 when the US created tribal membership rolls for allotment. Collier asked an opinion regarding their wishes from the Solicitor for the Department of the Interior, Frederick L. Kirgis. He responded that the Cherokee tribe continued to own any remaining land and other tribal assets, and those assets would be omitted from any new organization. As a result, intermarried whites and freedmen would lose no existing rights or property, even if otherwise excluded.<sup>52</sup>

Discord within the Cherokee occurred concurrently with the creation of the new constitution, although not regarding the question of reorganization. After the passage of the IRA and OIWA, Dick Pickup brought together the leaders of the various Keetoowah branches for a meeting in Tahlequah. After much discussion, a vote was taken to unite the society under one chief (continuing the collective movement in the 1920s when Levi Gritts had been selected as chief for all Keetoowah) and officially petition Congress. All leaders agreed to participate except for Stoke Smith who wished to retain his faction for solely religious purposes. On July 1939, despite difficulties obtaining permission to organize from the federal government, the committee

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<sup>52</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 15-6; Slagle, *Burning Phoenix*, 24; "Keetoowah History Essay," United Keetoowah Band, <http://www.ukb-nsn.gov/documents/history/historyessay.pdf> (accessed December 1, 2017); "The United Keetoowah Band if a Federally Recognized Tribe. Response to Milam, Keeler, Ross, and Mankiller," *The Cherokee Observer*, May 2005, <http://www.cherokeeobserver.org/PDF/May05/co0505pg8.pdf> (accessed December 1, 2017).

submitted the constitution to members for approval, which occurred shortly. This united Keetoowah for political purposes. However, Smith did not prevent the members of his band from participating in the new group.<sup>53</sup>

After agreeing to work together to unite under the OIWA, the united bands of Keetoowah held elections. Reverend John Hitcher defeated Levi Gritts for the office of chief in 1946. Hitcher served as the first chief of the new UCKI. After a feud with Hitcher, Gritts had withdrawn from the cooperative effort and took some of the Keetoowah Society, Inc. with him. The Seven Clan Society, led by Eli Pumpkin, also left for an unknown reason. Any further mention of the Seven Clan Society is not in any found sources.<sup>54</sup>

As Dr. Charles Wilson finished his research in Oklahoma, he wrote that none of the Keetoowah factions had ever been a governing unit of the Cherokee Nation. As a result, on July 1937, Frederick L. Kirgis, acting Solicitor of the Department of the Interior, denied the application of the Keetoowahs to organize under the OIWA. He stated that "...neither the Keetoowah Society nor any of its factions can be considered a band, much less a 'recognized' band under Section 3 of the Oklahoma Indian Welfare Act."<sup>55</sup>

Shortly after denying the Keetoowah the right to organize under the OIWA, the federal government discovered that the Five Tribes Act of 1906 never specifically mentioned the Keetoowahs. The act had restricted the tribal governments of the five tribes. However, since it did

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<sup>53</sup> "Keetoowah," *The Cherokee Observer*, October 1997, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017); Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 16, 21; Slagle, *Burning Phoenix*, 24; "Keetoowah History Essay," United Keetoowah Band, <http://www.ukb-nsn.gov/documents/history/historyessay.pdf> (accessed December 1, 2017).

<sup>54</sup> "Keetoowah," *The Cherokee Observer*, October 1997; Slagle, *Burning Phoenix*, 20-5; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 16, 21.

<sup>55</sup> Letter from Acting Secretary of the Interior to Henry M. Jackson, Chairman of the Committee of Indian Affairs, undated, Folder 88, Box 5 [WGS]; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 14-5; "The United Keetoowah Band if a Federally Recognized Tribe. Response to Milam, Keeler, Ross, and Mankiller," *The Cherokee Observer*, May 2005; Blackman, *Oklahoma's Indian New Deal*, 134; Slagle, "United Keetoowah Band," 98-9.

not include the Keetoowah, a legal grey area existed. This confusion led to years of research and debate before the Keetoowah again attempted to organize. Soon after Kirgis' denial, the Department of the Interior also ruled the Cherokee Nation (defined as the government organized under the 1839 constitution) ineligible to organize under the OIWA since it was formally dissolved in March 1906. In addition, field investigators found Cherokee citizens, with the exception of Keetoowahs, uninterested in reorganization and had abandoned tribal relations.<sup>56</sup>

Those the field investigators found uninterested in reorganization were more than likely Progressives. They lived and prospered within white society and would have gained less from returning to tribal self-determination. These assimilationists had incorrectly believed the IRA and OIWA functioned to strip them of property and send them on communally held reservations. Traditionals, however, made up most of the Keetoowah membership. They would have needed a tribal government to voice their plight as many lived in poverty, did not speak English or understand/have experience with non-native law and business.

Despite their denial, the Keetoowah never stopped functioning as the unofficial government for the Cherokee and kept lobbying the federal government for recognition. They continued to hold elections for council and elected John Hitcher as chief in 1939. Councilmen continued to be appointed from the old nine districts of the Cherokee Nation. Hitcher also served as chief from 1939 until his death in 1946, after which Jim Pickup became chief.<sup>57</sup>

In 1942, the Keetoowah sent a resolution and revised constitution to Landman requesting another analysis and decision. The most major revision from that submitted in 1939 changed the name of the band to the United Cherokee Band of Indians (UCBI). Although the name would

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<sup>56</sup> "The United Keetoowah Band if a Federally Recognized Tribe. Response to Milam, Keeler, Ross, and Mankiller," *The Cherokee Observer*, May 2005; Slagle, *Burning Phoenix*; Blackman, *Oklahoma's Indian New Deal*, 135.

<sup>57</sup> Slagle, *Burning Phoenix*; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 16; "The United Keetoowah Band if a Federally Recognized Tribe. Response to Milam, Keeler, Ross, and Mankiller," *The Cherokee Observer*, May 2005.

later change, the band sought to avoid the religious connotation of the term "Keetoowah." Membership had grown during the 1930s-1940s, representing approximately half of the Traditionals who lived within Cherokee territory.<sup>58</sup>

In 1944, the Chief of the Branch of Tribal Relations met with Chief Counsel of the US Indian Service Thomas Haas to consider the revising the 1937 opinion of Kirgis. In April, McNickle wrote a brief arguing the historical legitimacy of the UCBI. He stated that although the term "Keetoowah" may have originally applied to just a town, it historically existed as a governing unit. Keetoowahs and their constitution in 1858 pledged its members as a group of trustees to keep their people intact. By that time, many non-natives had come onto Cherokee land, factionalism became strong over how to respond, and it was necessary as a means of adopting measures for self protection. The actions of the Keetoowah during the Civil War showed they acted as a nation rather than solely a private organization. They exercised independent political action and had been a formally organized body since 1858. D'Arcy McNickle stated that "the fact that the original body split into factions ought not to persuade our judgment as to the true nature of the Keetoowah."<sup>59</sup>

McNickle also acknowledged the preference and practice of the US to continue to appoint "chiefs for a day" from the old Cherokee Nation. He stated that

"The pressures exerted by the US government resulted in producing numerous counter pressures within the Cherokee Society. Those elements within the tribe who were more compliant and willing to concede the demands made by the US in time were recognized as compromising the corpus of the tribe; those who resisted were treated as a malcontented minority."<sup>60</sup>

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<sup>58</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 19.

<sup>59</sup> Theodore H. Haas, "Ten Years of Tribal Government," Tribal Relations Pamphlet (United States Indian Service, 1947); Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 19; "Keetoowah History Essay," United Keetoowah Band, <http://www.ukb-nsn.gov/documents/history/historyessay.pdf> (accessed December 1, 2017); Keetoowah Society Laws, April 29, 1859, The Original Keetoowah Society, <http://keetoowahsociety.org/laws.htm> (accessed December 1, 2017); Slagle, "United Keetoowah Band," 98-9; Slagle, *Burning Phoenix*, 24.

<sup>60</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 20.

In short, factionalism occurred as the result of encroaching settlers and pressures of the federal government and should not be used as a justification to deny the right of the UCBI to organize.

McNickle and Chief Counsel Theodore Haas, defining the UCBI as a historic tribe, met on June 5, 1944, and recommended Congress pass a bill to recognize the Keetoowah under the OIWA, Section 3. This legislation would need to clarify the UCBI's status and right to reorganize as a tribe under the OIWA. Abe Fortas from the Department of the Interior, Oklahoma Senator William Stigler (who replaced Jack Nichols), and Senator Elmer Thomas all supported the bill. Also called Stigler's bill, the legislation went to Congress in April 1946 as part of a measure to also grant land to the Cheyenne-Arapaho tribe in Oklahoma. Levi Gritts stated in a letter to Stigler that since Frank J. Boudinot's death, the tribe lacked the funds to keep a delegation in Washington, DC, and asked for their help to represent their wishes in Congress. On August 10, 1946, President Harry Truman signed the bill, recognizing the Keetoowahs and their right to organize under the OIWA. This legislation passed nearly ten years after the Keetoowahs first attempted to regain self-determination under the OIWA.<sup>61</sup>

After Congress recognized the band's right to organize under the OIWA, the UCBI still needed to write a constitution that would be approved by its citizens as well as the Secretary of the Interior. This process took another four years, for unknown reasons. It is possible that the strain of daily survival during the Great Depression and the decade afterwards stalled longterm goals, such as a new tribal government. Tribal leaders busied themselves with helping those hit

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<sup>61</sup> Letter from Levi Gritts to W. G. Stigler, December 3, 1945. Folder 50, Box 1 [WGS]; Letter from W. G. Stigler to Levi Gritts, September 21, 1945. Folder 50, Box 1 [WGS]; Letter from Elmer Thomas to W. G. Stigler, February 11, 1946. Folder 50, Box 1 [WGS]; Letter from W. N. Maben on behalf of the Keetoowah Society, Inc. to W. D. Roberts and the Department of the Interior, May 6, 1946. Folder 73, Box 11 [ET]; "Challenge to Cherokee Nation Sovereignty is Challenge to Tribe's Right to Govern," *Cherokee Advocate* (Tahlequah, Indian Territory), July/August 1990; US Congress. *An Act Relating to the Status of Keetoowah Indians of the Cherokee Nation in Oklahoma, and for other purposes*, May 24, 1945, H. R. 341, Senate. 79th Cong., 2d sess., Folder 50, Box 1 [WGS]; Theodore H. Haas, "Ten Years of Tribal Government," Tribal Relations Pamphlet (United States Indian Service, 1947; Slagle, *Burning Phoenix*, 24-5; Leeds, *The United Keetoowah Band of Cherokee Indians*, 21-2; Blackman, *Oklahoma's Indian New Deal*, 135; Kosmerick, "William Grady Stigler."



the hardest. For example, after the 1940 election, Chief Hitcher requested building a central headquarters building for the use of "restricted Indians" in the Cherokee Nation (meaning the Traditionals that faced the most poverty). The BIA denied the request due to a lack of funds.<sup>62</sup>

In order to gain the right to organize under the OIWA, the Keetoowah were considered a separate organization from the Cherokee Nation. Otherwise, they would have been ruled as the same government that had been dissolved in 1906 and ineligible for reorganization.

Commissioner of Indian Affairs William Zimmerman (1948-1949) faced the task of recognizing which Cherokee factions made up the Keetoowahs, and the UCBI. Even though the UCBI had dropped the term to avoid religion connotation, natives and US officials still called them the Keetoowah.<sup>63</sup>

Eventually, in working with Chief Pickup, Zimmerman realized that the UCBI consisted of the six Keetoowah bands that existed at the time, as well as citizens of the old Cherokee Nation. Overlap occurred as well as many held membership in both Keetoowah and Cherokee factions. He also pointed out that a separate chief appointed by the US president, J. B. Milam, existed. He asserted that the best solution would be to recognize the UCBI as a separate band since the appointed chief represented the old Cherokee Nation. He also initially proposed organizing via one charter for the UCBI and then subcharters for each of the six divisions. Eventually, Zimmerman decided that the 1946 act authorizing organization designated the Keetoowah a band within the meaning of Section 3 of the OIWA but did not make a provision for the six other groups. He named the Keetoowah Society, Incorporated, the Nighthawks, the Seven Clan Society and acknowledged that others may exist that he was not aware of yet. As a result, he determined one charter for all sufficient and abandoned the idea of organization by confederation.

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<sup>62</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 16-9.

<sup>63</sup> Statement of William Zimmerman, Jr., Acting Commissioner of Indian Affairs, Muskogee, Oklahoma, November 10, 1947. <http://www.cornsilks.com/keetoowahtruth.html> (accessed December 1, 2017); Leeds, *The United Keetoowah Band of Cherokee Indians*, xvii; Letter from Felix S. Cohen to W. G. Stigler, January 27, 1947. Folder 116, Box 8 [WGS].

Despite his confusion, also shared by Jim Pickup due to a lack of written records for the Keetoowah, Zimmerman expressed a general desire to exist among the Cherokee and join together to protect their lands, improve education, and take care of the health of its neglected, more remote citizens. However, a single, compiled membership list of all who would be within a single charter under the Keetoowah name was needed.<sup>64</sup>

The Keetoowah continued functioning as normal, holding their annual meeting of the "United Keetoowah Society" on August 1, 1949 at the Lyons Community House near Stilwell, Oklahoma. They invited Oklahoma Representative William Stigler, with whom Chief Pickup had been in constant correspondence regarding US recognition and reorganization. Stigler expressed regret for his busy schedule and declined the invitation. The sources did not reveal the exact time or meeting, but at one of the gatherings at this time a membership roll was created.<sup>65</sup>

While lobbying for their charter and organization, the Keetoowah kept in touch with their US representatives and remained involved in advocating for those who favored their same goals. For example, Jim Pickup wrote to Stigler regarding the removal of an W. O. Roberts as Superintendent of the Five Civilized Tribes. Owens served as an ally for the Cherokee in his position, and the tribe needed to retain all the help they could.<sup>66</sup>

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<sup>64</sup> Letter from William Zimmerman to William G. Stigler, January 1947, Folder 116, Box 8 [WGS]; Letter from William Maben to Elmer Thomas, May 6, 1948. Folder 73, Box 11 [ET]; Letter from Felix Cohen to W. G. Stigler, January 27, 1947, Folder 116, Box 8 [WGS]; Statement of William Zimmerman, Jr., Acting Commissioner of Indian Affairs, Muskogee, Oklahoma, November 10, 1947, Folder 116, Box 8 [WGS]; Letter from Elmer Thomas to Claude E. Dowell, February 12, 1947. Folder 33, Box 11 [ET]; Letter from W. G. Stigler to Jim Pickup, August 9, 1947, Folder 116, Box 8 [WGS]; Slagle, *Burning Phoenix*, 25; "The United Keetoowah Band if a Federally Recognized Tribe. Response to Milam, Keeler, Ross, and Mankiller," *The Cherokee Observer*, May 2005; "Keetoowah," *The Cherokee Observer*, October 1997, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017).

<sup>65</sup> Letter from Jim Pickup to William Zimmerman, July 22, 1949. Folder 116, Box 8 [WGS]; Letter from William Zimmerman to Jim Pickup, October 6, 1948. Folder 116, Box 8 [WGS].

<sup>66</sup> Letter from Jim Pickup to William Stigler, August 24, 1949. Folder 116, Box 8 [WGS]; Letter from Jim Pickup to William Zimmerman, July 22, 1949. Folder 116, Box 8 [WGS]; Letter from William Zimmerman to Jim Pickup, October 6, 1948. Folder 116, Box 8 [WGS].

After receiving recognition, the UCBI began to work on a new constitution. Earl Boyd Pierce served as their legal counsel and assisted in writing it. The constitution passed in 1950 was almost identical to that submitted in 1939. The tribe created a reorganization committee that met every two weeks in Salina, Oklahoma, to work on a new governing document, as well as reenrolling the people. On April 15, 1948, at a council meeting, attendees appointed a Committee of Five Tribal Delegates to choose an attorney to represent the UCBI in Washington, DC and for claims against the US. The committee chose William Maben, who immediately started correspondence pushing for approval of a new charter and constitution. Lastly the tribe held a three-day barbeque giving the candidates for officers the chance to address their possible constituents. Reverend Jim Pickup, elected in chief in 1947, led the efforts to create a new, unifying document, as did Chief J. B. Milam, Cherokee chief appointed by President Theodore Roosevelt from 1941-1943.<sup>67</sup>

Enrolled as 1/32 Cherokee, J. B. Milam first attended the Cherokee Male Seminary, then graduated from the Metropolitan Business College in Dallas, Texas. After returning to Oklahoma, he worked in banking. In the mid 1930s, he served as the President of the Cherokee Seminary Students Association and was elected to the Board of Directors of the Oklahoma Historical Society.<sup>68</sup>

In July 1948, Milam convened a National Convention in Tahlequah. This meeting served mostly to select legal counsel for all the Cherokee groups. Gritts attended but left shortly after the start, stating that the BIA, Milam, and the attorneys present controlled the convention. The convention selected Earl Boyd Pierce as counsel, which Gritts especially rejected. The former

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<sup>67</sup> Letter from Levi Gritts to W. G. Stigler, September 21, 1945. Folder 50, Box 1 [WGS]; Resolution of the Keetoowah, undated. Folder 73, Box 11 [ET]; Letter from William Maben to W. G. Stigler, May 6, 1948, Folder 116, Box 8 [WGS]; Howard L. Meredith, *Bartley Milam: Principal Chief of the Cherokee Nation* (Muskogee, OK: Indian University Press, 1985); Letter from Levi Gritts to W. G. Stigler, April 17, 1945. Folder 50, Box 1 [WGS].

<sup>68</sup> Cherokee Nation Historical Society, "J. B. Milam: Businessman, Father, and Chief" (Tahlequah, Cherokee National Historical Society, Inc., 2013), <http://www.cherokeeheritage.org/wp-content/uploads/2013/08/MilamLowc.pdf> (accessed January 14, 2018).

chief claimed Pierce was unfriendly to him because the Keetoowah Society, Incorporated had refused to hire the attorney in the past. In addition, Pierce supported the recognition of Pickup as the leader of the Keetoowahs over Gritts. Beyond Gritts, discord seemed absent among the various groups of Cherokees gathered. Pierce and the other attorneys selected had worked with the tribe previously, representing groups within the tribe in their pursuit of claims against the US.<sup>69</sup>

The convention suggested Milam appoint a permanent standing committee of nine members from the gathered assembly. The committee would then choose attorneys to represent all enrolled Cherokees by blood, except intermarried non-natives and freedmen. This counsel would serve all groups of Cherokees, dividing them into Eastern Cherokees, Old Settlers, United Keetoowah Band, Seven Clans Society, and Texas Cherokees. Even though Gritts had left and taken his Keetoowah Society, Inc. followers with him, the convention included them as well.<sup>70</sup>

The new procedure for selecting a chief for the recognized Cherokees (UCBI) included the Superintendent of the Five Civilized Tribes sending a list of prospective candidates to the Commissioner of Indian Affairs, who would then forward his recommendation to the Secretary of the Interior. Lastly, the Secretary would forward the final selection to the president. This way, the chief would still be appointed by president as previously, but the selection would at least originate from a pool of candidates chosen by the tribe. In 1949, this Executive Committee elected W. W. Keeler as its vice chairman and appointed Chief Pickup as interpreter. The committee then followed its newly outlined method of selecting a US-appointed chief. Chief of UCBI, which intended to represent all Cherokees, Jim Pickup submitted his name for the appointed chief, but

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<sup>69</sup> Letter from William Zimmerman to Elmer Thomas, February 7, 1947. Folder 33, Box 11 [ET]; Letter from W. G. Stigler to Jim Pickup, August 9, 1947, Folder 116, Box 8 [WGS]; Cherokee Nation Historical Society, "J. B. Milam: Businessman, Father, and Chief" (Tahlequah, Cherokee National Historical Society, Inc., 2013; Statement of William Zimmerman, Jr., Acting Commissioner of Indian Affairs, Muskogee, Oklahoma, November 10, 1947; Slagle, *Burning Phoenix*; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 22-3.

<sup>70</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 23.

the Executive Committee unanimously selected W. W. Keeler, an executive of Phillips Oil Company. President Harry Truman appointed Keeler in 1949, whose selection angered many Traditionals as he was only one-sixteenth Cherokee and the appointment was viewed by many as nothing more than a political favor for past support.<sup>71</sup>

Truman's appointment of Keeler also caused governing issues, and is viewed by many as the basis of the creation of the dual government for the Cherokee that exists today.<sup>72</sup> The convention that Milam called served to unify the Cherokee people under one government. However, the Keetoowah (including the six groups considered Keetoowah) were those authorized to organize under Section 3 of the OIWA. The former Cherokee Nation no longer existed except for those chiefs the US president appointed. Had Pickup, already chief of the Keetoowah, been selected by the Executive Committee to serve as the appointed chief, the Cherokees from the old nation, who followed Milam, would have been united with the Keetoowah, who had elected Pickup as their chief.

As an appointed rather than elected chief, Keeler and his attorney Earl Boyd Pierce attended Keetoowah council meetings. Keeler told members they only served in the capacity of caretakers. He considered the Keetoowah the true government and promised that once the Keetoowah had enough experience to run affairs, he would relinquish his position. Despite these promises, Keeler never abdicated and remained the appointed chief throughout the 1950s and 1960s.<sup>73</sup>

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<sup>71</sup> Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997; Statement of William Zimmerman, Jr., Acting Commissioner of Indian Affairs, Muskogee, Oklahoma, November 10, 1947; Slagle, *Burning Phoenix*; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 23-4.

<sup>72</sup> Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997.

<sup>73</sup> Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997.

Regardless of the appointment of Keeler and Milam's convention, the Keetoowah continued their efforts to write a new charter and constitution to reorganize under the OIWA. The old Cherokee Nation served as mostly a political faction following the presidentially appointed chief. By 1940, the UCBI membership reached more than 3,687, representing nearly half of the "full bloods" that lived within Cherokee territory. Despite the continued existence of the smaller groups, they supported the Keetoowah to take care of their people as the recognized tribal government.<sup>74</sup>

While writing the new governing document and nearly ready to request federal recognition, a debate ensued regarding the name of the organizing body. Rather than use the name UCBI, all those present were Keetoowah and wanted a new name to reflect that. The gathering decided they had been brought together despite all the divisions and named themselves the United Keetoowah Society. The BIA had issues with extending federal recognition to a "society," and proposed the final name, the United Keetoowah Band of Cherokee Indians (UKB). The gathering accepted the name, and submitted the charter application and new constitution for formal federal recognition.<sup>75</sup>

The new constitution was nearly identical to the one written in 1939. The major change concerned lowering the blood quantum requirement from one half to one fourth degree. Council members were reduced from twenty seven to nine, with one representing each of the old Cherokee Nation districts. The new by-laws also did not require a chief or vice chief. The power of the new organization fell to the council as the major governing body. They stated "the boundaries of the band were and are continuous with those of the old Cherokee Nation."<sup>76</sup>

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<sup>74</sup> Leeds, *The United Keetoowah Band of Cherokee Indians*, xvii, 19; Slagle, *Burning Phoenix*; Statement of William Zimmerman, Jr., Acting Commissioner of Indian Affairs, Muskogee, Oklahoma, November 10, 1947.

<sup>75</sup> Letter from Chief Jim Pickup to Elmer Thomas, September 22, 1947. Folder 33, Box 11 [ET].

<sup>76</sup> Constitution and By-Laws of United Keetoowah Band of Cherokee Indians in Oklahoma, ratified October 3, 1950. United Keetoowah Band of Cherokee Indians in Oklahoma. <http://www.ukb->

The corporate charter defined the purposes, corporate powers, and restrictions of the UKB and could only be revoked by Congress. The charter noted the band held ownership of unallotted lands. When the Department of the Interior assigned all of the remaining lands of the old Cherokee Nation to the UKB, it contradicted the 1937 opinion of Kirgis that the UKB could organize without affecting future land distribution to intermarried non-natives and freedmen, as the remaining lands and assets of the Cherokee Nation would be excluded from the newly organized tribal entity.<sup>77</sup>

The tribe submitted its new governing documents and Pickup personally gave a copy of the constitution to Associate Solicitor Felix Cohen during his trip to Oklahoma in November 1946. Chief Pickup remained in constant correspondence with Elmer Thomas and, through him, the Interior Department to inquire often about the progress of their approval. Cohen reassured them the constitution looked as if it would need only minor revisions. However, the approval moved very slowly for the tribe eager to reorganize. Chief Pickup wrote directly to the US House of Representatives after several inquiries to the Interior Department, asking officials to approve their charter and to "please don't let this be a broken Promises, [sic] Hand us Down a charter."<sup>78</sup> Pickup, as well as Stigler and Thomas, frequently wrote Zimmerman and other members of

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nsn.gov/documents/constitution.pdf (accessed December 1, 2017); Letter from W. G. Stigler to Felix Cohen, Assistant Secretary of Interior, January 7, 1947. Folder 116, Box 8, [WGS].

<sup>77</sup> Letter from William Zimmerman to William G. Stigler, January 1947, Folder 116, Box 8 [WGS]; Letter from Chief Jim Pickup to the Commissioner of Indian Affairs, June 3, 1947, Folder 116, Box 8 [WGS]; Letter from Chief Jim Pickup to W. G. Stigler, January 2, 1947. Folder 116, Box 11 [WGS]; Letter from Felix S. Cohen, Associate Solicitor, to W. G. Stigler, January 16, 1947. Folder 116, Box 8 [WGS]; Letter from Felix Cohen to W. G. Stigler, January 15, 1947, Folder 116, Box 8 [WGS]; Letter from Jim Pickup to John Provinse, Assistant Commissioner of Indian Affairs, January 10, 1947, Folder 116, Box 8 [WGS]; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 35; Slagle, "United Keetoowah Band," 98-9.

<sup>78</sup> Letter from William Zimmerman to William G. Stigler, January 1947, Folder 116, Box 8 [WGS]; Letter from Chief Jim Pickup to the Commissioner of Indian Affairs, June 3, 1947, Folder 116, Box 8 [WGS]; Letter from Chief Jim Pickup to W. G. Stigler, January 2, 1947. Folder 116, Box 11 [WGS]; Letter from Felix S. Cohen, Associate Solicitor, to W. G. Stigler, January 16, 1947. Folder 116, Box 8 [WGS]; Letter from Felix Cohen to W. G. Stigler, January 15, 1947, Folder 116, Box 8 [WGS]; Letter from Jim Pickup to John Provinse, Assistant Commissioner of Indian Affairs, January 10, 1947, Folder 116, Box 8 [WGS]; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, 35; Slagle, "United Keetoowah Band," 98-9.

Congress regarding the status and slow pace of approval of the Keetoowah documents. Stigler mentioned in a September 1947 letter that the matter had been pending for more than a year. Letters inquiring of the charter and constitution's approval continued until 1950.<sup>79</sup>

Chief Pickup relied heavily on Representative Stigler and his contacts to inquire and push for approval of Keetoowah organization. The Keetoowah invited Stigler to the Keetoowah Society Annual Convention in Salina, Oklahoma, on August 11, 1947. Levi Gritts proposed, and the tribe passed, a resolution at a convention recognizing and thanking Stigler for his work on their behalf for organization. This resolution mentioned the recognition and charter from Congress of the Keetoowah with the "abolition of the Cherokee Tribal Government."<sup>80</sup>

Acting Commissioner of Indian Affairs John Provinse blamed the delay on the question of membership and the existence of various groups within the UKCI. Debate continued regarding the decision to have one constitution or a confederate organization, especially after Ben Smith (a leader of one of the groups) stated he would not join with the others until the differences had been reconciled. US officials also remained unsure of the tribe's membership. Provinse stated that a list containing approximately 5,000 names existed, but no one was able to locate it.<sup>81</sup>

W. D. Roberts, Superintendant of the Five Civilized Tribes wrote to the Keetoowah with his questions and comments on their governing documents on April 25, 1948. Roberts stated that while the Keetoowah Society, Inc. is widely known, there was "no record in this office which will enable us to identify the Keetoowah Society, Inc. There is no record of membership or the organization of the Society."<sup>82</sup> Gritts replied by recounting the band's history, beginning with the 1859 constitution written by Bud Gritts. Next, on September 20, 1902, the Keetoowah secured a

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<sup>79</sup> Letter from Levi Gritts to W. G. Stigler, July 24, 1947, Folder 116, Box 8 [WGS]; Letter from W. G. Stigler to William Zimmerman, September 25, 1947, Folder 116, Box 8 [WGS].

<sup>80</sup> Resolution, The Keetoowah Society, Inc. of the Cherokee Band of Indians of the State of Oklahoma, April 15, 1948, Folder 116, Box 8 [WGS].

<sup>81</sup> Letter from John Provinse to W. G. Stigler, March 12, 1948, Folder 116, Box 8 [WGS].

<sup>82</sup> Letter from Levi Gritts to W. D. Roberts, May 6, 1948, Folder 116, Box 8 [WGS].



charter from the Northern District US Court of Indian Territory. Gritts mentioned that the stated charter would be on file in the office of the Secretary of the Interior. Gritts pointed out the 1946 act that stated "the Keetoowah Indians of the Cherokee Nation of Oklahoma shall be recognized as a band of Indians residing in Oklahoma" recognized the tribe and passed without opposition. Any information required regarding the UKCI was given by Senator Elmer Thomas and Congressman Schwabe of Oklahoma. Roberts also questioned the right of the Keetoowah to file claims, to which Gritts answered with the 1946 act that by being recognized as a tribe through a charter they legally had a right to file in the Court of Claims. Lastly, Gritts stated that a roll of Keetoowah existed, kept by their secretary James W. Duncan. However, the list had been lost after Duncan's death.<sup>83</sup>

On May 8, 1950, with the recommendation of the Commissioner of Indian Affairs Dillon S. Meyer, Assistant Secretary of the Interior William E. Warne approved the charter, constitution, and by-laws of the UKB. The next day the Secretary of the Interior gave his conditional approval, stipulating that all governmental authorities within the tribe must be retained according with the tribe's will and within federal Indian law. After US approval, the new governing documents required endorsement by the tribe. On October 3, 1950, the Keetoowah ratified their constitution, by-laws, and corporate charter by a vote of 1,414 to 1.<sup>84</sup>

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<sup>83</sup> Letter from Levi Gritts to W. D. Roberts, May 6, 1948, Folder 116, Box 8 [WGS]. When speaking of the charter awarded to the Keetoowah in the early twentieth century, tribal sources date it 1902 while US sources use the year 1905. The Cherokee Agreement occurred in 1902 but official documents state 1905 for the charter.

<sup>84</sup> Constitution and By-Laws of United Keetoowah Band of Cherokee Indians in Oklahoma, ratified October 3, 1950. United Keetoowah Band of Cherokee Indians in Oklahoma. <http://www.ukb-nsn.gov/documents/constitution.pdf> (accessed December 1, 2017); Letter from Elmer Thomas to Chief Jim Pickup, October 7, 1947 [ET]; Letter from William E. Warne to Elmer Thomas, October 6, 1947 [ET]; "Keetoowah Band to Have Election Today," *Muskogee Daily Phoenix*, October 3, 1950; Letter from Jim Pickup to William Zimmerman, July 22, 1949. Box 8 [WGS]; Letter from William Zimmerman to Jim Pickup, October 6, 1948. Box 8 [WGS]; Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, xvii, 35-6; "Challenge to Cherokee Nation Sovereignty is Challenge to Tribe's Right to Govern," *Cherokee Advocate* (Tahlequah, Indian Territory), July/August 1990; "Keetoowah," *The Cherokee Observer*, October 1997, [www.cherokeeobserver.org/keetoowah/octissue97.html](http://www.cherokeeobserver.org/keetoowah/octissue97.html) (accessed January 1, 2017); "The United Keetoowah Band if a Federally Recognized Tribe. Response to Milam,

While the ad-hoc leadership of the Cherokee remained strong after the abolition of tribal government, the OIWA provided a stage for communicating native voices with the US government. Ending allotment and regenerating a nation-to-nation relationship with some native self-determination proved the largest impact of the OIWA on US Indian policy. The reorganization of tribal governments in the early twentieth century paved the way for such acts by the US towards indigenous self-determination in the 1970s. While the termination policy of the 1950s cycled the US away from native sovereignty, the reforms and precedent of the IRA-era legislation provided a blueprint for quicker implementation of the self-determination policies of the 1970s.

Despite the successes in reorganizing tribal governments, the OIWA and other policies of the Indian New Deal also had many failures. During the early legislative process, US policymakers gave little foresight to funding and the mechanisms needed to implement the new laws. Continued underfunding of Indian New Deal programs inhibited their effectiveness and long term impact. Often, once organized, natives would request funds from a promised revolving credit account, which was often empty because Congress had not appropriated any funds. As a result, the new laws did not alleviate poverty, homelessness, racial discrimination, and unemployment. In addition, the OIWA failed to provide protection for allotted land remaining in Indian possession, specifically by its inability to remove the administration of native estates from state to federal court. As a result, local lawyers continued to earn income from ongoing legal matters regarding allotment and the corruption, manipulation, and sometimes outright stealing, as described by Angie Debo.<sup>85</sup>

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Keeler, Ross, and Mankiller," *The Cherokee Observer*, May 2005; Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997; Blackman, *Oklahoma's Indian New Deal*, 135; Slagle, *Burning Phoenix*; Josh Clough, "United Keetoowah Band," *Oklahoma Encyclopedia of History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=UN006>.

<sup>85</sup> Stremlau, *Sustaining the Cherokee Family*, 238; Neal M. Hampton, "'We Have to Think of the Indian People Themselves': Oklahoma Indians and the Congresses of October 1934," unpublished paper,

Other obstacles included the overall drain on government resources by the Great Depression. Also, several indigenous did not understand how to take advantage of the new programs, Congress did not want to extend credit to American Indians because of high default levels, and a lack of administrative staff to aid in implementing the new policies existed. Many Americans still adhered to assimilation as the correct solution to the "Indian problem" and refused to accept any changes to preexisting policies.<sup>86</sup>

Regarding the reorganization of tribal governments, historians disagree on its success. Loretta Fowler argued that few tribes organized under the OIWA because non-native constitutions were written by and forced on them by BIA officials. These prewritten constitutions did not adhere to the political traditions of the tribes. Alison Bernstein agrees, stating that Collier was "superimposing white political organization on tribe structures."<sup>87</sup> Jon Blackman falls into this school of thought as well, maintaining that few tribes organized under with OIWA because they either did not understand a republican government or they refused to stray from their traditional decision-making structure.<sup>88</sup>

The arguments of Fowler, Bernstein, and Blackman do not apply to the Cherokee. They had more than one hundred years of experience with a constitutional republican government. In addition, there were no outside suggestions or writings in the UKB constitution. The tribe held several meetings to decide the details of their governing document. Debo also maintained the opposing view, at least for the Creeks and Keetoowah, as both had experience with the accepted form of government under the provisions of the OIWA. She said of the constitution submitted by

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University of Central Oklahoma, <http://www.se.edu/nas/files/2015/08/A-NAS-2013-Proceedings-Hampton.pdf> (accessed December 1, 2017); Blackman, *Oklahoma's Indian New Deal*, 121, 124-125.

<sup>86</sup> Hampton, "We Have to Think of the Indian People Themselves"; Blackman, *Oklahoma's Indian New Deal*, 121, 124, 125.

<sup>87</sup> Alison R. Bernstein, *American Indians and World War II: Toward a New Era in Indian Affairs* (Norman, OK: University of Oklahoma Press, 1991), 8.

<sup>88</sup> Loretta Fowler, "Local-Level Politics and the Struggle for Self-Government," in *The Struggle for Political Autonomy: Papers and Comments from the Second Newberry Library Conference on Themes in American Indian History* (Chicago, IL: Newberry Library, 1989), 130; Blackman, *Oklahoma's Indian New Deal*, 133.

the Creek that "they were not superimposed by white men for they are in harmony with fundamental Creek institutions."<sup>89</sup>

In another facet of historiography of these new tribal governments, James Olson and Raymond Wilson argued that few Oklahoma tribes organized, not because of forced constitutions, but because of factionalism. Olson and Wilson stated that Collier underestimated the diversity and strife within Oklahoma tribes, having more experience with the close-knit tribal relations of the Navajos and Pueblos. Kenneth Philip agreed, stating that the IRA and OIWA intensified existing factionalism because of disputes regarding who would control the newly established tribal governments. However, in regards to the Cherokees, the lack of violent factionalism after their previous history proves the importance of maintaining a voice for their people over individual desires. During the early twentieth century factions still existed but they worked together for the common goal of obtaining recognition from the US. For example, the six separate groups of Keetoowah kept their local leaders while functioning together under the umbrella of the UKB. The Nighthawk wished to remain separate from politics as a religious organization. The existence of factions did not necessarily mean conflict during this era. The practice of keeping local leaders under the umbrella of a larger governing institution was similar to the pre-constitutional Cherokee practice of having clan leaders and larger village meetings.<sup>90</sup>

The largest, and most obvious, problem of the OIWA's provisions for tribal governments involved the process of reorganization, it was not a true form of self-determination. Tribes remained subject to the approval of the US government. The Secretary of the Interior had to approve charters and constitutions. Had any portion of these new governing documents proved

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<sup>89</sup> Debo, *And Still the Waters Run*, 373-4.

<sup>90</sup> James Olson and Raymond Wilson, *Native Americans in the Twentieth Century* (Urbana, IL: University of Illinois Press, 1986), 122; Kenneth R. Philip, "Indian Reform in Crisis: John Collier and the Thomas-Rogers Act," in Kenneth E. Hendrickson, *Hard Times in Oklahoma: The Depression Years* (Oklahoma City: Oklahoma Historical Society, 1983), 163.

undesirable or unfavorable towards the US, the Secretary of the Interior could prevent the tribe from reorganizing. Although the US did not prevent reorganization of any tribes other than requesting editing of their governing documents, the federal government still maintained that authority over the tribes. The OIWA served as a vast improvement from not having a recognized tribal government to speak on behalf of its people, but it did not provide complete, independent sovereignty. The policy continued the paternalistic attitudes of the US, seen in the belief that natives are unable to govern or care for themselves without supervision of US officials.

Despite its downfalls, the OIWA did provide lasting improvements to US Indian policy. This policy reversed the Curtis Act, allowed natives to govern themselves, and permitted the indigenous to have a central authority with which to work towards political and economic advancement. Even after the Curtis Act and abolishment of their tribal government, Cherokee leaders continued lobbying the US regardless of recognition of a native central authority. Instead, during the era with no formally recognized government, the Cherokees united all of their factions, realizing they needed each other and cooperation to achieve anything for their people. Despite ineligibility to reorganize under the IRA, Levi Gritts and Keetoowah kept lobbying anyway. Finally, with the passage of the OIWA, the Keetoowah Cherokee seized the opportunity to reorganize a US-recognized government and work for the care of and economic advancement of their people.

## CHAPTER VII

### CONCLUSION

In the early twentieth century, the Curtis Act and other assimilationist policies ended tribal governments in Indian Territory after the completion of allotment. As a result, the Cherokees and other tribes lost the right to self govern. Despite the sometimes violent intratribal factionalism that ran rampant for nearly one hundred years and the later retreat into several community-level organizations, the shared experiences of hardship of a new generation of leaders enabled the unification and cooperation of these groups under the Keetoowah to work for the benefit of all the Cherokee. Without this intratribal collaboration, the Cherokee would not have been able to capitalize on the more favorable US federal Indian policies of the 1930s-1940s and reorganize into a tribal government.

With this work covering both external and internal pressures on the Cherokee people, a context of previous Cherokee history is needed to understand the previous violent factionalism as well as the disastrous US federal Indian policies tribal leaders and indigenous citizens endured and reacted to. This previous experience of the tribe magnifies the importance of the leaders unifying towards a common goal in the twentieth century.

After the adoption of a written, republic-style constitution in 1828, the Cherokee leaders endured and faced the external pressures of the Trail of Tears, reunifying under a single government after removal, splitting during the American Civil War, and encroachment of white settlers, and allotment of their lands. As a result of these events, the leaders also faced internal

pressure from their citizens as they differed over the best way to maintain self-determination during these hardships.

The fighting between these factions not only weakened the tribe's negotiating power with the US but also resulted in feelings of betrayal, revenge violence, and bitter feuds along factional and familial lines. These conflicts prevented intratribal cooperation as leaders and their immediate descendants continued these grudges and feuds. As these leaders passed, the later generations lacked the experience of the violent factionalism and feuds. As a result, they proved more willing to cooperate with other factions for the benefit of all the Cherokee people. By the early twentieth century, descendants of previously warring factions served together.

After reunification of the Cherokee into a single government in Indian Territory and after the destruction of the Civil War, the generation of leaders during the 1870s and 1880s proved more willing to cooperate than their predecessors and serve as an early example of the cooperation that was to come in the 1920s. The generation of leaders in the 1870s grew up with the violence between the factions and resentments still existed. However, even with these bitter memories, this willingness to work together created a prosperous golden era of the Cherokee republic. This period shows the positive results of working together, often only possible after a new generation of leaders emerged without the experience of factional violence. The cooperation during this era is rivaled only by that in the 1920s, when leaders were even further removed from feuding factionalism. However, the progress of the cooperating factions in the 1870s and 1880s was shortened by the detrimental US federal Indian policy of assimilation. In contrast, the Cherokee in the 1920s were able to further capitalize on their cooperation with the favorable legislation passed during the Indian New Deal.

In the early twentieth century, legislation passed forcing private land ownership through allotment and dissolving tribal governments in Indian Territory in 1906. Statehood became a

discussion regarding Oklahoma and Indian territories. The Cherokee and other tribes viewed statehood as a last chance to retain self-determination through a separate native state. However, once it became apparent a separate state would not be approved by the US, the Cherokee were forced to return to wrapping up allotment and the affairs of the nation before the end date of the tribal government.

Some Cherokee, such as Chief William Charles Rogers, became resigned to the fate of their government and implementation of allotment. However, Traditionals under the Keetoowah refused to stop fighting for self-determination and saw this capitulation as an obstacle to their goal of continuing their tribal government. As a result they sought to remove Rogers by impeaching him due to his refusal to call the last tribal election and selecting Frank J. Boudinot as the new chief. However, the US refused to recognize Boudinot as the leader of the Cherokees and the dissolution of the tribal government under Rogers continued.

A Boudinot working with the Traditionals/Keetoowah illustrates an early shift in leadership and a greater willingness to work together regardless of previous feuds between factions. Frank J. Boudinot was a descendant of Stand Watie, Elias Boudinot, and the Ridges who had signed the Treaty of New Echota that resulted in Cherokee removal during the Trail of Tears. These actions resulted in assassinations and several years of violence between the Treaty Party and Traditionals. However, in the early twentieth century, as the previous leaders and their children had passed, leaders such as Boudinot did not experience the same events that led to the violence and worked with Traditionals as they held the common goal of continuing Cherokee self-determination. This collaboration serves as another early indicator of the cross-factional cooperation that was possible and occurred in the 1920s.

Even though Boudinot and the Traditionals viewed Rogers as an obstacle to their continued opposition to allotment and dissolution of the tribal government, he was not solely



blamed for the assimilation policies as the Treaty Party had been held responsible for the Cherokee Trail of Tears. This less direct blame for assimilation also fostered easier cooperation between groups.

With the US refusing to recognize Boudinot and officially ending the tribal government, the Cherokee split into community-level groups that served as de facto governments for closely residing citizens. In 1905 the Keetoowah applied for and acquired a corporate charter to function as a business to be able to handle the finances of the Cherokee in the absence of a tribal government. Funding proved vital as many Cherokee struggled with day to day survival. The Keetoowah Society, Incorporated worked within the US Court of Claims to sue for funds owed to the tribe. Other organizations, such as the Cherokee Executive Council, the Eastern and Western Cherokee, Tulsa Contingent, and the Cherokee Executive Committee also functioned as businesses to attempt to aid their destitute people.

The level of poverty caused by allotment, as well as the shared experience of leaders in caring for their elders, families, and communities led to the unification of the various groups. This new generation lacked the memories of violent feuding factions and had all endured allotment and the dissolution of the tribal governments and witnessed the desperate conditions of their people. As a result, they were more willing to work together for the good of all Cherokee people. Sam Smith, leader of the Nighthawk Keetoowah, called for the initial meeting to unify all the factions. Interestingly, the Nighthawks had been the first to withdraw from the rest of the factions in the early years of the twentieth century to focus solely on religion and living traditionally. The Nighthawks now argued that they needed to all work together as they shared a common goal, as well as the need to collaborate with those educated in Anglo American business and law. The several groups of Keetoowah, as well as the other community organizations, collaborated and all selected Levi Gritts as their chief. Even though the US refused to recognize or work with Gritts,

this work towards unification proved advantageous as it enabled the Cherokee to easier capitalize on the favorable US Indian policy of the Indian New Deal.

As the Cherokee factions unified, a new class of reformers and government officials, such as John Collier, began studying and publishing reports on the failure of assimilation policies. As a result, US Indian policy shifts and becomes more supportive of native self-determination. The Indian Reorganization Act of 1934 [IRA] served to provide much needed financial aid to tribes as well as allowed the reorganization of their governments. Despite the exclusion of the Five Tribes from the IRA, Gritts travelled to Washington, DC, immediately to lobby for Cherokee inclusion. The Oklahoma Indian Welfare Act (OIWA) passed in 1936, enabling the Five Tribes to take advantage of similar policies. The Keetoowah applied for the reorganization of a tribal government for the Cherokee. With delays resulting from the confusion of US officials regarding Cherokee history and their factions, the Keetoowah finally received approval for their new constitution and the US recognized them as the government for the Cherokee in 1950. Until the 1970s, this government that resulted from the unified factions in the 1920s served as the tribal government for the Cherokees. Without the collaboration of the 1920s, the Cherokee would not have been able to reorganize under the OIWA.

This work combines the study of the external pressures on the Cherokee such as federal Indian policy as well as internal pressures on tribal leaders from resulting various reactions, as well as provides a missing chronicle of the Cherokee to existing historiography by not only covering the early to mid twentieth century but also by discussing their intratribal factionalism and overcoming such conflicts to reorganize under the Oklahoma Indian Welfare Act.

Previous research ends after the Curtis Act for multiple reasons. First, sources are scarce after the US terminated recognition of tribal governments. Without a centralized institution with dedicated recordkeeping and storage, records, legal documents, petitions, and personal papers of

tribal leaders ceased to be kept together. The National Council no longer existed to provide summaries of its proceedings. After 1906, if leaders needed to disseminate information to the Cherokee people they published their announcements in local newspapers. As a result, newspapers serve as the bulk of sources for this time period and often it is only fragments of events. Tribal and museum archives do not possess personal letters or writings of the Cherokee from this time period, most likely from the focus on day to day survival by the people suffering from hardship caused by the assimilation policies. A later interview of Keetoowah leader Levi Gritts was taken in the mid twentieth century and serves as one of the only written firsthand account of the time period by a Cherokee. A lack of sources causes the research of this time period to be very difficult, spotty, and tedious.

Secondly, many policies affected several tribes at once and it remains difficult to speak on one tribe without including concurrent events with others. For example, allotment affected many more tribes other than the Cherokee but the experience and reaction of the people varies from tribe to tribe. Some policies included two unrelated tribes together, such as settling on the same lands, while at the same time another act may include another two tribes. This creates confusion in not only research but also in writing a coherent narrative of a manageable length.

The events of the early twentieth century are also utilized today in the struggle for authority between two factions of the Cherokee. As a result, many histories are told in a biased manner, contradictory to each other and favoring each group's right to tribal control. The Cherokee Nation cites itself as the same, continuous government created by the constitution in 1828. The UKB argues that the government created in 1828 ended when the Curtis Act abolished it in 1906. The Keetoowah government, recognized by federal charter then with an approved constitution in 1950, served as the tribal authority. Historians have not fully examined the logic of both sides and individual Cherokees cite one history over the other, usually depending on their personal membership. Other historians indirectly comment on the two governments by only

mentioning one in their conclusion, usually that of the Cherokee Nation. Rose Stremlau writes as concludes her work stating that the Cherokee had no formal government until the new constitution in the 1970s. Jon S. Blackman briefly quotes other tribes as having disputes over whether Progressives or Traditionals should run their new governments, but does not go into detail or mention that of the Cherokees. The lack of historiography likely occurs because of the previously mentioned lack of sources as well as strong personal biases within the tribe.

Lastly, general American Indian history of reorganization of tribal governments under the Oklahoma Indian Welfare Act, intratribal factionalism, ethnoregenesis, and general tribal political history during the early to mid twentieth century remain scarce. Once tribal governments are abolished, not much is written on the community level organizations that continued to care for their people. Historiography covers code talkers and native participation in the world wars, federal boarding schools, allotment, and corruption in the US government as those topics have an abundance of sources available. This dissertation not only fills in the deficit of native history in the early twentieth century, it also chronicles the importance of previously contentious relations shifting to amicable cooperation under intense external pressure from assimilation policies. During a low point of Cherokee history including destitution and a lack of tribal government, leaders used their shared experience to cooperation and organize at the grassroots level to care for their people and regain self-determination. As a result of the collaboration as well as experience with constitutional government, the Cherokee were better prepared to take advantage once more favorable US Indian policy emerged.

Plenty of opportunities exist for further study during this time period and topic. The collaboration of factions occurred both in the 1870s and 1920s and a study comparing and contrasting the leaders and effectiveness of both would provide further depth to Cherokee history. Incorporating the experience of other tribes affected by these same policies with similar factional

conflicts and tribal governments, such as the Creek, would illustrate a uniqueness or similarity of the experience of different tribes to similar policies.

Overall, rather than passively accepting the dissolution of their government fighting among themselves, the Cherokees worked together under the Keetoowahs to maintain and regain their self-determination in the early twentieth century. Without this action and unity, the Cherokee would have lost any autonomy or organization to provide the services of a tribal government, such as distributing funds and providing the Cherokee a voice and representation to the US government.

## CHAPTER VIII

### EPILOGUE

The Keetoowah people ratified their constitution and the federal corporate charter on October 3, 1950. By 1963, the Bureau of Indian Affairs began using the Keetoowah as a conduit for federal funding to the Cherokees as they existed as the only official Cherokee entity in Oklahoma until the 1970s. After forty-four years without a recognized central authority, the Cherokee regained a conduit for their participation in the decisions regarding their lives through their resilient leadership.<sup>1</sup>

Just two decades after moving away from assimilation ideology, the US changed its Indian policy once again. FDR's Indian New Deal ended as World War II turned the nation's attention from domestic issues to the war abroad. A high turnover in the Bureau of Indian Affairs led to an influx of new workers who knew nothing of American Indians, further halting forward progress for natives. US interest in Indian reorganization dwindled and in 1945 Commissioner of Indian Affairs John Collier resigned.<sup>2</sup>

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<sup>1</sup> "Challenge to Cherokee Nation Sovereignty is Challenge to Tribe's Right to Govern," *Cherokee Advocate* (Tahlequah, Indian Territory), July/August 1990; "Keetoowah History," United Keetoowah Band of Cherokee Indians, [www.ukb-nsn.gov](http://www.ukb-nsn.gov) (accessed March 1, 2013); Allogan Slagle, *Burning Phoenix: A Study of the Federal Acknowledgement, Reorganization, and Survival of the United Keetoowah Band of Cherokee Indians in Oklahoma* (Tahlequah, OK: United Keetoowah Band, 1993), 3.

<sup>2</sup> Francis Paul Prucha, *The Great Father: The US Government and the American Indians*, unabridged edition (Lincoln, NE: University of Nebraska Press, 1995), 993; Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York City, NY: Peter Land, 1996), 21.

After Collier's resignation and that of his supporter, Secretary of Interior Harold Ickes in 1946, the US moved towards a new policy of "termination." Termination served as another form of assimilating the indigenous into mainstream non-native society with the goal of ending the responsibility of the federal government for Indian affairs by ending the "ward" status. Termination consisted of four actions: repealing laws that set natives apart from other citizens, such as land restrictions; ending services of the BIA and transferring those duties to state, local, and tribal governments; freeing indigenous people from federal supervision and guardianship; and terminating US responsibility for the affairs of individual tribes. As a result, advances toward further self-governance ended until the Nixon administration, which would prove complicated for the Cherokee.<sup>3</sup>

The new Commissioner of Indian Affairs, Dillon S. Myer, and his successor, Glenn L. Emmons, launched the termination policy. In addition to ending federal responsibility for natives, the new policy sought to assimilate indigenous people into mainstream white society by sending American Indians to cities to find work. The BIA also discontinued agricultural assistance to further motivate people to move to cities. Before, the assimilation policy of the late-nineteenth century sought to integrate natives through creating individual, yeoman farmers. Termination, with the same general goals, instead modernized and pushed natives to become wage laborers.<sup>4</sup>

By the 1960s, the termination policy was judged a failure with American Indians remaining in poverty. In addition, the rise of civil rights movements by groups such as the American Indian Movement or the Indians of All Tribes and their actions like the occupation of Alcatraz and siege of Wounded Knee, brought public and government attention to the plight of

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<sup>3</sup> House Committee on Interior and Insular Affairs. House Report No. 841, 83-1, serial 11666. 1953; Prucha, *The Great Father*, 1014; "Challenge to Cherokee Nation Sovereignty is Challenge to Tribe's Right to Govern," *Cherokee Advocate* (Tahlequah, Indian Territory), July/August 1990.

<sup>4</sup> Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton: NJ: Princeton University Press, 1940), xxiii; Russell Means, *Where White Men Fear to Tread* (New York City, NY: St. Martin's Press, 1995).

the indigenous. President Richard Nixon acknowledged the constant difficulties a 1970 speech stating that,

The first Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom. This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands, and denied the opportunity to control their own destiny.<sup>5</sup>

Nixon advocated for the end of forcing assimilation on natives and instead supported tribal self-determination.

The Indian Self-Determination and Education Assistance Act of 1975 officially made tribal self-determination the focus of the federal government. The act shifted control of previously federally-run programs to the tribes. In exchange for tribes setting up certain services, such as law enforcement and childcare, the tribes, according to guidelines of the act, would receive funding for programs. At first, the BIA resisted this loss of influence, but, eventually it relented. The Supreme Court further strengthened the act by ruling the federal government liable for the promised funding in *Cherokee Nation v. Leavitt* (2004) after Congress failed to appropriate sufficient funds.<sup>6</sup>

In 1970, Nixon authorized the appointed chiefs of the Five Tribes to call for elections for their tribes. The UKB made no action since they already had a constitutional, recognized tribal government. However, W. W. Keeler called for an election and was chosen in 1971 to the position he had held as an appointee for more than twenty years. Despite his promises in the late

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<sup>5</sup> Richard Nixon, "Message from the President of the United States Transmitting Recommendations for Indian Policy," July 9, 1970. 91st Cong., 2nd sess., H. Doc. 91-363.

<sup>6</sup> US Congress. *Indian Self-Determination and Education Assistance Act, January 4, 1975*. 88 stat. 2203; *Cherokee Nation of Oklahoma v. Leavitt*, 543 US 631 (US Supreme Court, 2003).



1940s to resign, Keeler never abdicated his presidentially-appointed position as chief of the Cherokee Nation.<sup>7</sup>

The Cherokee Nation had been abolished as a tribal government in 1906 according to the Curtis Act. However, the US president continued to appoint "chiefs for a day" to continue handling allotment land deeds and providing a signature. Despite the end of allotment with the Indian Reorganization Act in 1934, President Truman appointed another chief, Keeler, in 1948. With this redundant appointment, Truman (and Keeler through his refusal to step down) essentially created the modern two government dilemma. In 1971, Keeler became chief while the UKB also had a chief. Later UKB Chief John Hair expressed the confusion many had when he proclaimed, "I don't really know why they set up Cherokee Nation."<sup>8</sup> Keeler continued the "chief for a day" role needed by the US since passage of the allotment policy while the UKB labored to organize under the OIWA to represent all Cherokee people.

After the election of Keeler, the Cherokee Nation adopted a new constitution. Commissioner of Indian Affairs Morris Thompson approved it in September 1975. The Nation stated the new governing document superseded the old constitution of 1839. A history printed during the summer of 1990 in the *Cherokee Advocate* asserted the new law also ended "the rights of all Cherokees to belong to clans or organizations within the Cherokee Nation." However, in the actual constitution, Section XIV dictates that "nothing in this Constitution shall be construed to prohibit the right of any Cherokee to belong to a recognized clan or organization in the Cherokee Nation."<sup>9</sup> In other words, the Cherokee could belong to one or more of the various factions.

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<sup>7</sup> Sandra Sac Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997, [www.cherokeeobserver.org/parker.html](http://www.cherokeeobserver.org/parker.html) (accessed December 1, 2017).

<sup>8</sup> Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997; Josh Clough, "United Keetoowah Band," *The Oklahoma Encyclopedia of History and Culture*, <http://www.okhistory.org/publications/enc/entry.php?entry=UN006> (accessed December 1, 2017).

<sup>9</sup> Constitution of the Cherokee Nation of Oklahoma, 1975. Cherokee Nation. <http://www.cherokee.org/Our-Government/Commissions/Constitution-Convention/1975-Cherokee-Nation-Constitution> (accessed January 20, 2018); "Challenge to Cherokee Nation Sovereignty is Challenge to Tribe's Right to Govern," *Cherokee*

The Nation considered the UKB a small, separate group rather than the representative of all Cherokees, even when they had been the only recognized government from 1950 to 1970, and had a corporate charter since 1905. The Nation argued it was the only authority for all Cherokee since 1839, and used Frederick Kirgis' denial of the first Keetoowah attempt to organize under the OIWA to delegitimize the UKB in the 1970s. Kirgis had stated the reason for his denial was that none of the Keetoowah factions had ever been a governing unit of the Cherokee Nation.<sup>10</sup> However, Kirgis' decision had been overturned and the UKB had adopted a constitution approved by the US. In addition, the US distributed federal funds for all Cherokee to the UKB since the 1950s. The Nation eventually denied it was ever terminated by the US, stating the Five Tribes Act kept that government active, although in a different format than their previous constitutional republic with presidentially appointed chiefs. As a result, the Nation's government never ended and the UKB served as just a separate clan.<sup>11</sup>

By 1979, relations between the UKB and Nation became strained. The Indian Self-determination Act of 1975 allowed the Nation to contract directly with the BIA for services. Before, the UKB had been the only entity of the tribe able to work with the US. Despite the federal government working with the Nation, the UKB leadership maintained they should be dealt with separately from the Nation. Since 1950, all funds and services had been funneled through the UKB and now the two governments lobbied for the same benefits.

In 1979, Cherokee Nation Chief Ross O. Swimmer authored a lengthy letter arguing, "the only way of avoiding serious conflicts and complications for all Cherokees is for Congress to act in accordance with Article 8 of their corporate charter which says their charter may be revoked by

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*Advocate* (Tahlequah, Indian Territory), July/August 1990; Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997. The term "Nation" was used to refer to the Cherokees who organized under this new constitution separately from the UKB in 1975. Hereafter, Nation will refer to that same organization.

<sup>10</sup> Leeds, *The United Keetoowah Band of Cherokees*, 15.

<sup>11</sup> Julia Coates, councilmember of the Cherokee Nation, "History of the Cherokee Nation-UKB Relationship, Installment Three," Blog post, September 2, 2014.

an Act of Congress.<sup>12</sup> Congress never revoked the UKB charter. However, the Director the Office of Indian Services, Theodore Krenzke, stated that the UKB had organized under the OIWA and "clearly has the status of a separate tribal entity."<sup>13</sup> Julia Coates, Tribal Councilor for the Nation from 2007-2015, stated that the fact that the UKB organized under the name the Keetoowah Indians of the Cherokee Nation of Oklahoma shows that they considered themselves part of the existing Nation, not over it. They organized solely for economic reasons, and in working often with Chief Keeler, acknowledged the existence of the Nation's government.<sup>14</sup>

The UKB now, however, disputes the Nation's view of its organization under OIWA. The UKB views the Nation as terminated in 1906. They argued that the UKB organized and existed as the only Cherokee government after this point in history. In addition, they argue that their 1950 constitution served all those with the old Cherokee Nation. As a result, the UKB considers itself the only legitimate government.<sup>15</sup>

Since 1980, the BIA has held the position that the UKB has the same membership as the Cherokee Nation of Oklahoma, meaning they are of the same people. Both governments are currently federally recognized. Modern disputes between the UKB and Nation center on the legality of a UKB casino and its right to issue tribal tags. In addition, controversy erupted with the Nation's attempt to renegotiate or alter the Treaty of 1866, as the UKB believed the they had no authority to do so without the Keetoowah. The Treaty of 1866 forced the Cherokee Nation to grant freedmen full tribal citizenship. In the 1980s, the Cherokee Nation stripped freedmen ancestors of citizenship and voting rights. Numerous court cases emerged, both within Cherokee

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<sup>12</sup> Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997.

<sup>13</sup> Parker, "UKB of Cherokee Indians in Oklahoma," *The Cherokee Observer* (Blackwell, OK), September 1997; "Challenge to Cherokee Nation Sovereignty is Challenge to Tribe's Right to Govern," *Cherokee Advocate* (Tahlequah, Indian Territory), July/August 1990.

<sup>14</sup> Julia Coates, "History of the Cherokee Nation-UKB Relationship, Part Four," September 9, 2014. Blog Post via email. September 9, 2014.

<sup>15</sup> Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma*, xviii; Clough, "United Keetoowah Band."

and US courts. The basis of the status of freedmen ancestors came from the Treaty of 1866, which the Cherokee Nation wanted to renegotiate. The UKB asserted the Nation had no authority for such negotiations without them. In 2017 the US District Court ruled in favor of the freedmen descendants, granting them full rights to tribal citizenship, which the Cherokee Nation accepted.<sup>16</sup>

Other than the autobiographies of tribal leaders, since the 1970s, historians have yet to analyze this modern issue of two governments for the Cherokees in Oklahoma. Those who do mention it in their epilogues ignore the UKB organization completely, similar to Rose Stremlau, who states the Cherokee did not have a federally recognized tribal government until the 1970s. Georgia Rae Leeds and Allogan Slagle, two of the few authors on Keetoowah history, provide more details from the UKB point of view. Jon S. Blackman acknowledges the UKB organized under the OIWA and passed a constitution in 1950, but treats them separately from the Cherokee Nation as more of a small clan.<sup>17</sup>

Blackman argues in *Oklahoma's Indian New Deal* that the biggest impact the OIWA made on tribal government other than federal recognition was that it taught Oklahoma Indians how to function and make decisions through a constitutional government. He continues to state that most Oklahoma tribes did not organize under OIWA because they were not used to working together within the structure of a republic and the law created or worsened factionalism within the

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<sup>16</sup> Chief George Wickliffe, "A Letter to the UKB," *Keetoowah News* (Tahlequah, OK), August 2007; Clough, "United Keetoowah Band"; "The Cherokee Freedmen Debate," Indivisible, African-Native American Lives in the Americas, [http://nmai.si.edu/exhibitions/indivisible/cherokee\\_freedmen.html](http://nmai.si.edu/exhibitions/indivisible/cherokee_freedmen.html) (accessed February 16, 2018).

<sup>17</sup> Rose Stremlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill, NC: University of North Carolina Press, 2011); Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York, NY: Peter Lang, 1996); Allogan Slagle, *Burning Phoenix: A Study of the Federal Acknowledgement, Reorganization, and Survival of the United Keetoowah Band of Cherokee Indians in Oklahoma* (Tahlequah, OK: United Keetoowah Band, 1993); Jon S. Blackman, *Oklahoma's Indian New Deal* (Norman, OK: University of Oklahoma Press, 2013).

tribes as it enabled Progressives, who were more familiar with Anglo style government, to completely take over the decision making process.<sup>18</sup>

This sweeping generalization of all Oklahoma tribes does not take into consideration the Cherokee. Blackman does recognize that the Keetoowah Cherokees organized under the new legislation, but fails to note that it did not create or increase factionalism among them. Organization under the OIWA with a corporate charter ran more smoothly for the Cherokees because they already had one hundred years of experience with Anglo-style government. They had been making decisions within a constitutional government with three branches since the first half of the nineteenth century. The tribe did experience intense factionalism after the creation of that government, similar to what Blackman describes happening to other tribes in Oklahoma after the OIWA, but did not affect their organization in the 1930s. In fact, the opposite happened. After a slight confusion of which group should be recognized, Cherokee organizations came together and submitted a charter as the United Keetoowah Band.

An interesting missing history is a comparative study of tribal factionalism between tribes that had an Anglo-style constitutional republic prior to the General Allotment Act and those who remained community-oriented and/or matrilineal. Previous to the adoption of the 1828 constitution, the Cherokees made decisions as a community. Those who disagreed showed their disapproval by leaving or refusing to vote on an issue. Organized factions functioned as political parties, with a hatred so intense it developed into extreme violence at times. A study to see if factionalism became more popular after adopting Anglo-style government would prove an interesting addition to the needed growth of histories chronicling American Indian reactions to US policies.

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<sup>18</sup> Blackman, *Oklahoma's Indian New Deal*.

Although plenty of room exists for future studies in indigenous communities and tribal governments in the early twentieth century, this study adds to the chronicle of the resilient Cherokee leadership of the era following tribal government termination. Rather than passively accepting the dissolution of their government fighting among themselves, the Cherokees worked together under the Keetoowahs to maintain and regain their sovereignty in the early twentieth century. Without this action and unity, the Cherokee Nation would have lost any autonomy or organization to provide the services of a tribal government, such as distributing funds and providing the Cherokees a voice and representation to the US government, until the tribal self-determination era of the 1960s-70s.

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## APPENDIX I

### CHEROKEE CHIEFS

#### **Cherokee Nation**

John Ross, 1828-66

Major Thomas Peggs, 1862-63 (temporary chief during American Civil War), Northern faction

Stand Watie, 1861-65, Southern faction

Smith Christie, 1863 (temporary chief during American Civil War), Northern faction

Lewis Downing, 1864-66 (temporary chief during American Civil War), Northern faction

W. P. Ross, 1866-67

Lewis Downing, 1867-72

W. P. Ross, 1872-75

Charles Thompson, 1875-79

Dennis W. Bushyhead, 1879-88

Joel B. Mayes, 1888-91

Colonel Johnson Harris, 1891-95

Samuel H. Mayes, 1895-99

T. M. Buffington, 1899-1903

William C. Rogers, 1903-07

Frank J. Boudinot (never recognized by the US, deposed), 1905

W. W. Keeler, 1971-75

Ross Swimmer, 1975-85

Wilma Mankiller, 1985-95

Joe Byrd, 1995-99

Chadwick Smith, 1999-2011

Bill John Baker, 2011-present

### **Old Settler, Western Cherokees**

John Jolly, 1819-38

John Rogers, 1838-39

John Looney, 1838-April 1839, July 1839-September 1839 when East and West Cherokees combined.

### **Keetoowah**

Redbird Smith, 1906-1919, Nighthawk Keetoowahs

Stoke Smith, 1919-unknown, Keetoowah Society, Inc. and later Nighthawks

Levi Gritts, 1920s, various Keetoowah band coalitions

John Hitcher, United Keetoowah Band, 1939-46

Jim Pickup, United Keetoowah Band, 1946-54

Jeff Tindle, United Keetoowah Band, 1954-60

Jim Pickup, United Keetoowah Band, 1960-67

William Glory, United Keetoowah Band, 1967-79

James L. Gordon, United Keetoowah Band, 1979-83

John Hair, United Keetoowah Band, 1983-91

John Ross, United Keetoowah Band, 1991-95

Jim Henson, United Keetoowah Band, 1996-2000

Dallas Proctor, United Keetoowah Band, 2000-04

George Wickliffe, United Keetoowah Band, 2005-present

### **Appointed by US Government, "Chief for a Day"**

Andrew Bell Cunningham, November 8-25, 1919

Edward M. Fry, June 23, 1923



Richard B. Choate, 1925

Charles J. Hunt, December 27, 1928

Oliver P. Brewer, May 26, 1931

William W. Hastings, 1936

Jesse B. Milam, 1941 to 1949

William W. Keeler, July 1949 to August 1971 (elected in 1971, served until 1975)

## APPENDIX II

### Faction Names

#### Treaty Party

Also known as Watie's followers, the Southern Party, Knights of the Golden Circle, Southern Rights Party, during the American Civil War. Also known as Progressives, those who were more assimilated into non-native American culture.

#### Ross Party

Also known as Traditionalists, lived separately from non-native society and believed in a return to traditional customs and religion.

#### Keetoowah or Pin Indians (During American Civil War)

Several followers of Ross, Traditionals, continued to fight for the American Union during the Civil War.

#### Downing Party

Formed by John B. Jones to oppose William P. Ross in 1867. Charles Thompson in election of 1875. David Rowe for chief in 1879. Thomas Buffington in 1899. W.C. Rogers in 1903. Rogers and Downing Party called the Democrats of the nation.

#### Bell-Boudinot Party

Watie's followers. After Watie's death in 1871, James M. Bell became leader. Mostly related by family ties and Civil War alliances, opposed William P. Ross (Chief at the time) and was against the Downing Party. They remained an alienated group throughout the 1870s and lobbied for the opening of Indian Territory. They never formed a complete opposition political party.

#### National Independent Party

Political party in 1879 led by Dennis Bushyhead and Rabbit Bunch to oppose Ross and the Downing Party. Dennis Bushyhead for chief in 1879. Rabbit Bunch for chief in 1887.

#### National Party

William P. Ross as candidate for chief in 1875, Wolf Coon in 1899. E. L. Cookson in 1903. D. W. Bushyhead, allied with the Keetoowah in 1887. Called themselves the Republican

Party of the Cherokees. Changed its name to the Keetoowah Society of National Party of the Cherokee Nation in 1899 when the National Party and Keetoowah Society combined.

Keetoowah Society (political party)

In 1870s, joined with Downing Party to oppose Progressive corruption. Opposed allotment until the early 1900s.

Nighthawk Keetoowah Society

Redbird Smith created to continue to oppose allotment after the Keetoowah Society gave up.

### APPENDIX III

#### Cherokee Blood Law

*Whereas;* a law has been in existence for many years, but not committed to writing, that if any citizen or citizens of this Nation should treat and dispose of any lands belonging to this Nation without special permission from the National authorities, he or they shall suffer death;

*Therefore;* resolved, by the Committee and Council, in General Council convened, that any person or persons who shall, contrary to the will and consent of the legislative council of this Nation in general council convened, enter into a treaty with any commissioner or commissioners of the United States, or any officers instructed for that purpose, and agree to sell or dispose of any part or portion of the National lands defined in this Constitution of this Nation, he or they so offending, upon conviction before any of the circuit judges aforesaid are authorized to call a court for the trial of any such person or persons so transgressing.

*Be it Further Resolved;* that any person or persons, who shall violate the provisions of this act, and shall refuse, by resistance, to appear at the place designated for trial, or abscond, are hereby declared to be outlaws; and any person or persons, citizens of this Nation, may kill him or them so offending, in any manner most convenient, within the limits of this Nation, and shall not be held accountable for the same.

Passed by the Cherokee General Council on October 24, 1829

This was the law that was followed by Cherokee citizens when they executed John Ridge, Elias Boudinot, and Major Ridge in June of 1839.

## APPENDIX IV

### Relevant Aspects of the Curtis Act, June 28, 1828

#### **SEC. 14**

For the purposes of this section all the laws of said State of Arkansas herein referred to, so far as applicable, are hereby put in force in said Territory; and the United States court therein shall have jurisdiction to enforce the same, and to punish any violation thereof, and the city or town councils shall pass such ordinances as may be necessary for the purpose of making the laws extended over them applicable to them and for carrying the same into effect

#### **SEC. 16**

That it shall be unlawful for any person, after the passage of this Act, except as hereinafter provided, to claim, demand, or receive, for his own use or for the use of anyone else, any royalty on oil, coal, asphalt, or other mineral, or on any timber or lumber, or any other kind of property whatsoever, or any rents on any lands or property belonging to any one of said tribes or nations in said Territory, or for anyone to pay to any individual any such royalty or rents or any consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe to which they belong:

#### **SEC. 19**

That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under directi

#### **SEC. 21**

That in making rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed to take the roll of Cherokee citizens of eighteen hundred and eighty (not including freedmen) as the only roll intended to be confirmed by this and preceding Acts of Congress, and to enroll all persons now living whose names are found on said roll, and all descendants born since the date of said roll to persons whose names are found thereon; and all persons who have been enrolled by the tribal authorities who have heretofore made permanent settlement in the Cherokee Nation whose parents, by reason of their Cherokee blood, have been lawfully admitted to citizenship by the tribal authorities, and who

were minors when their parents were so admitted; and they shall investigate the right of all other persons whose names are found on any other rolls and omit all such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee laws.

It shall make a roll of Cherokee freedmen in strict compliance with the decree of the Court of Claims rendered the third day of February, eighteen hundred and ninety-six.

#### **SEC. 26**

That on and after the passage of this Act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory.

#### **SEC. 27**

That the Secretary of the Interior is authorized to locate one Indian inspector in Indian Territory, who may, under his authority and direction, perform any duties required of the Secretary of the Interior by law, relating to affairs therein.

#### **SEC. 28**

That on the first day of July, eighteen hundred and ninety-eight, all tribal courts in Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal causes then pending in any such court shall be transferred to the United States court in said Territory by filing with the clerk of the court the original papers in the suit:

## APPENDIX V

### Relevant Portions of the Five Tribes Act, April 26, 1906

#### **SEC. 6**

That if the principal chief of the Choctaw, Cherokee, Creek, or Seminole Tribe, or the governor of the Chickasaw Tribe shall refuse or neglect to perform the duties devolving upon him, he may be removed from office by the President of the United States, or if any such executive become permanently disabled, the office may be declared vacant by the President of the United States, who may fill any vacancy arising from removal, disability or death of the incumbent, by appointment of a citizen by blood of the tribe.

If any such executive shall fail, refuse or neglect, for thirty days after notice that any instrument is ready for his signature, to appear at a place to be designated by the Secretary of the Interior and execute the same, such instrument may be approved by the Secretary of the Interior without such execution, and when so approved and recorded shall convey legal title, and such approval shall be conclusive evidence that such executive or chief refused or neglected after notice to execute such instrument.

#### **SEC. 11**

That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. All such claims arising before dissolution of the tribal governments shall be presented to the Secretary of the Interior within six months after such dissolution, and he shall make all rules and regulations necessary to carry this provision into effect and shall pay all expenses incident to the investigation of the validity of such claims or indebtedness out of the tribal funds: *Provided*, That all taxes accruing under tribal laws or regulations of the Secretary of the Interior shall be abolished from and after December thirty-first, nineteen hundred and five, but this provision shall not prevent the collection after that date nor after dissolution of the tribal government of all such taxes due up to and including December thirty-first, nineteen hundred and five, and all such taxes levied and collected after the thirty-first day of December, nineteen hundred and five, shall be refunded.

Upon dissolution of the tribal governments, every officer, member, or representative of said tribes, respectively, having in his possession, custody, or control any money or other property of any tribe shall make full and true account and report thereof to the Secretary of the Interior, and shall pay all money of the tribe in his possession, custody, or control, and shall deliver all other tribal property so held by him, to the Secretary of the Interior, and if any person shall willfully and fraudulently fail to account for all such money and property

so held by him, or to pay and deliver the same as herein provided for sixty days from dissolution of the tribal government, he shall be deemed guilty of embezzlement and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment not exceeding five years, or by both such fine and imprisonment, according to the laws of the United States relating to such offense, and shall be liable in civil proceedings to be prosecuted in behalf of and in the name of the tribe for the amount or value of the money or property so withheld.

#### **SEC. 15**

The Secretary of the Interior shall take possession of all buildings now or heretofore used for governmental, school, and other tribal purposes, together with the furniture therein and the land appertaining thereto, and appraise and sell the same at such time and under such rules and regulations as he may prescribe, and deposit the proceeds, less expenses incident to the appraisal and sale, in the Treasury of the United States to the credit of the respective tribes: *Provided*, That in the event said lands are embraced within the geographical limits of a State or Territory of the United States, such State or Territory or any county or municipality therein shall be allowed one year from date of establishment of said State or Territory within which to purchase any such lands and improvements within their respective limits at not less than the appraised value. Conveyances of lands disposed of under this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances.

#### **SEC. 18**

That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, either before or after the dissolution of the tribal governments, for the collection of any moneys or recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits: *Provided*, That proceedings to which any of said tribes is a party pending before any court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in anywise affected, but shall proceed to final disposition.<sup>1</sup>

#### **SEC. 19**



That no full-blood. Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior...

#### **SEC. 27**

That the lands belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, upon the dissolution of said tribes, shall not become public lands nor property of the United States, but shall be held in trust by the United States for the use and benefit of the Indians respectively comprising each of said tribes, and their heirs as the same shall appear by the rolls as finally concluded as heretofore and hereinafter provided for: *Provided*, That nothing herein contained shall interfere with any allotments heretofore or hereafter made or to be made under the provisions of this or any other act of Congress.

#### **SEC. 28**

That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes or nations are hereby continued in full force and effect for all purposes authorized by law, until otherwise provided by law, but the tribal council or legislature in any of said tribes or nations shall not be in session for a longer period than thirty days in any one year: *Provided*, That no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States: *Provided further*, That no contract involving the payment or expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States.

#### **SEC. 29**

That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

## APPENDIX VI

### Oklahoma Indian Welfare Act, 1936

#### Portions relevant to tribal self-government

#### **SEC. 3.**

Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: *Provided, however,* That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund, and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934 (48 Stat. 984): *Provided,* That the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter.

#### **SEC. 4.**

Any ten or more Indians, as determined by the official tribal rolls, or Indian descendants of such enrolled members, or Indians as defined in the Act of June 18, 1934 (48 Stat. 984), who reside

within the State of Oklahoma in convenient proximity to each other may receive from the Secretary of the Interior a charter as a local cooperative association for any one or more of the following purposes: Credit administration, production, marketing, consumers' protection, or land management. The provisions of this Act, the regulations of the Secretary of the Interior, and the charters of the cooperative associations issued pursuant thereto shall govern such cooperative associations: *Provided*, That in those matters not covered by said Act, regulations, or charters, the laws of the State of Oklahoma, if applicable, shall govern. In any stock or nonstock cooperative association no one member shall have more than one vote, and membership therein shall be open to all Indians residing within the prescribed district.

#### **SEC. 5.**

The charters of any cooperative association organized pursuant to this Act shall not be amended or revoked by the Secretary except after a majority vote of the membership. Such cooperative associations may sue and be sued in any court of the State of Oklahoma or of the United States having jurisdiction of the cause of action, but a certified copy of all papers filed in any action against a cooperative association in a court of Oklahoma shall be served upon the Secretary of the Interior, or upon an employee duly authorized by him to receive such service. Within thirty days after such service or within such extended time as the trial court may permit, the Secretary of the Interior may intervene in such action or may remove such action to the United States district court to be held in the district where such petition is pending by filing in such action in the State court a petition for such removal, together with the certified copy of the papers served upon the Secretary. It shall then be the duty of the State court to accept such petition and to proceed no further in such action. The said copy shall be entered in the said district court within thirty <sup>1</sup> days after the filing of the petition for removal, and the said district court is hereby given jurisdiction to hear and determine said action.

The Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this Act. All Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved, June 26, 1936.

## VITA

Tabatha Dee Toney

Candidate for the Degree of

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